

Strategic Plan FY 14-15

Business & Licensing Section

Department of Law

MISSION: The Business and Licensing Section's mission is to provide the highest quality legal representation to regulatory boards, commissions, programs and governmental agencies.

Objective 1: Business and Licensing's ("B&L") attorneys shall serve as general counsel to the following clients to effectuate the shared goal of public protection: Department of Regulatory Agencies, Department of Agriculture, and the Independent Ethics Commission. B&L also serves as special counsel or conflicts counsel to other state agencies.

- Goal 1: Attorneys shall provide timely, accurate and responsive legal advice to the agencies and boards.
- Goal 2: Attorneys for all units shall identify general counsel and litigation needs of the agencies and boards and communicate those needs to supervisors and clients.
- Goal 3: Attorneys for all units shall assist in rulemaking as needed or requested by the agencies.
- Goal 4: When appropriate to the agency, attorneys shall develop and maintain internal tracking systems for cases, informal attorney general opinions, rulemaking, and legislation affecting the agencies.
- Goal 5: Attorneys shall provide aggressive and effective legal representation of the board or other clients on all appeals of board or agency decisions.

Objective 2: The Assistant Attorneys General ("AAGs") within B&L shall develop subject matter expertise on issues relevant to the clients they represent.

- Goal 1: The Section shall continue to implement the training protocols for new attorneys by pairing each new attorney with a First Assistant or mentor and by holding section-wide practice improvement sessions.
- Goal 2: The Section shall maintain competence of all attorneys by participating in the evaluation process and the goal planning process with supervisors.
- Goal 3: The attorneys shall attend Continuing Legal Education programs and other training relevant to their practice.
- Goal 4: Supervisors shall improve legal advice to all agencies by identifying areas of law and practice where section wide consistency can be achieved, and shall implement tools to address consistency.

Objective 3: The section shall effectuate the client's goals through effective litigation by initiating actions in administrative court, State District Court, courts of appeal and other courts as necessary.

- Goal 1: Attorneys shall effectively and efficiently litigate cases referred to the AGO.

- Goal 2: Supervisors and team leaders shall provide an educational environment in which attorneys and staff may increase their substantive knowledge of the subject matter and develop litigation skills.
- Goal 3: All units shall have policies in place to assure early attorney review and development of case strategies appropriate for all referred cases.
- Goal 4: All units shall identify backlogs and have plans in place to effectively manage backlogs.
- Goal 5: Units shall work with clients to continually educate investigators and staff regarding their role in managing evidence, affidavits and documentation supporting the legal elements that must be proved at hearing.

Objective 4: The B&L attorneys shall provide effective conflicts counsel to agencies as assigned.

- Goal 1: Attorneys shall effectively advise the State Personnel Board in its adjudicatory role in actions that come before the Board, and provide rulemaking support and other advice as required.
- Goal 2: Attorneys shall effectively advise the Civil Rights Commission in its adjudicatory role in actions that come before the commission, and provide rulemaking support and other advice as required.
- Goal 3: Attorneys shall effectively advise the Mined Land Reclamation Board in its adjudicatory role in actions that come before the Board.

I) BACKGROUND INFORMATION: BUSINESS AND LICENSING SECTION

The Department of Regulatory Agencies

The Department of Regulatory Agencies (“DORA”) houses several divisions. The AAGs enforce compliance with the law by prosecuting disciplinary actions against licensed professionals, by representing the programs in licensure denial actions, by litigating civil enforcement and subpoena enforcement actions, and by litigating injunctive actions. In addition to prosecuting individual cases, the attorneys provide general counsel advice regarding legislative and policy matters, rulemaking and case analysis. Examples include:

Division of Professions and Occupations: B&L AAGs provide legal representation to regulatory boards, committees and programs within the Division of Professions and Occupations (formerly the Division of Registrations), the largest division within DORA. The professions regulated include accountants, acupuncturists, addiction counselors, architects, athletic trainers, barbers, cosmetologists, chiropractors, dentists, dental hygienists, electricians, engineers, land surveyors, landscape architects, hearing aid dealers, massage therapists, marriage and family therapists, direct-entry midwives, nurses, nurse aides, nursing home administrators, occupational therapists, optometrists, outfitters, passenger tramways, physicians, physical therapists, plumbers, podiatrists, pharmacists, private investigators, professional counselors, psychologists, respiratory therapists, social workers, speech pathologists, registered psychotherapists, surgical assistants, surgical technologists, the nurse-physician advisory task force for Colorado health care (“NPATCH”), veterinarians and the newly created naturopathic doctors licensure program.

B&L AAGs also provide representation to the Division of Professions and Occupations in carrying out its oversight role for the Michael Skolnik Medical Transparency Act of 2010.

Division of Real Estate: The AAGs representing the Division of Real Estate provide legal counsel to the Colorado Real Estate Commission, the Board of Real Estate Appraisers, the Mortgage Loan Originator Board, and the Colorado Conservation Easement Oversight Commission. Unit attorneys provide each of these boards and commissions general counsel services. Unit attorneys also litigate on behalf of these clients in both state and administrative courts.

Division of Insurance: AAGs representing the Division of Insurance act as general and litigation counsel to the various sections of the Division of Insurance (“Division”). The Division regulates all matters regarding the business of insurance in Colorado, including health care insurance, health maintenance organizations, long-term care, Medicare supplement insurance, life insurance, and property and casualty insurance. The Division also regulates preneed funeral contracts, commercial bail bonding and all unauthorized activities determined to be the business of insurance. Unit attorneys assist and advise on a wide variety of subject areas related to the regulation of insurance companies and their agents (insurance producers), including rulemaking, changes and amendments to the insurance laws, informal attorney general opinions of legal issues pertaining to insurance, open records requests, and consumer complaints. Unit attorneys are assisting the Division with new developments in the law regarding health insurance and significant changes in commercial bail bonding resulting from recent legislation. Litigation is conducted in administrative and district courts on behalf of the DOI against insurance companies and producers in cases involving insurance law violations and/or the unauthorized business of insurance. Unit attorneys also represent the Division in all matters involving third party litigation.

Division of Securities: AAGs representing the Division of Securities assist the client in the regulation of securities, broker-dealers, sales representatives, investment advisers, and investment adviser representatives and other related entities. Unit attorneys conduct litigation on behalf of the Division of Securities in administrative and district court against individuals, companies, and investment funds or entities that operate in violation of the Colorado Securities Act.

Division of Banking: The Division of Banking regulates state-chartered commercial banks, trust companies, and money transmitters. The AAGs provide legal representation and advice to the Board and the Division of Banking on such issues as involuntary liquidations of banks, merger and consolidation applications, and general legal advice including rulemaking.

Division of Financial Services: AAGs representing the Colorado Financial Services Board assist the client in the regulation of life care institutions, state-chartered credit unions, and state-chartered savings and loan associations.

Independent Ethics Commission

The AAGs representing the Independent Ethics Commission assist the Commission in carrying out its constitutional and statutory duties through the Commission’s issuance of Position

Statements, Advisory Opinions and Letter Rulings relating to standards of conduct for government officials. AAGs also help the Commission in its constitutional duty to investigate and hold hearings on ethical complaints.

Department of Agriculture

The Business and Licensing Section provides general and litigation counsel to the Colorado Department of Agriculture and the Commissioner of Agriculture. This representation is provided by two full-time AAGs who represent and provide legal advice to the various divisions within the department including: the Animals Division, the Colorado State Board of Livestock Inspection, the Conservation Services Division, the Inspection and Consumer Services Division, the Plants Division, and the Markets Division. The AAGs also represent and advise the Colorado State Fair and several other marketing-related boards associated with the department. The AAGs assist the department in dealing with a myriad of complicated legal issues on a daily basis from livestock disease emergency quarantines, takings and destructions, to regulation of pesticide use, licensing of commodity handlers, certification of organic producers, and prevention of plant diseases, many of which involve complex interactions between state and federal law. The AAGs also assist with rulemaking, drafting of proposed legislation and the sunset review process.

Mined Land Reclamation Board

The Business and Licensing Section provides a General Counsel position that serves as permanent conflicts counsel to the Colorado Mined Land Reclamation Board (“MLRB”), a multi-interest citizen board that establishes the regulations, standards, and policies that guide the Division of Reclamation, Mining and Safety (“DRMS”). The MLRB implements the Colorado Mined Land Reclamation Act, the Colorado Land Reclamation Act for the Extraction of Construction Materials, and the Colorado Surface Coal Mining Reclamation Act. The MLRB is actively involved in the decision-making process for controversial permit issuance and enforcement actions.

Other Conflicts Counsel Clients

Business and Licensing also represents the Civil Rights Commission and the State Personnel Board. The Civil Rights Commission is a seven-member commission appointed by the Governor for four-year terms. The State Personnel Board includes five members serving five-year terms, three of whom are appointed by the Governor and two of whom are elected by members of the state personnel system.

II) PRIOR YEAR LEGISLATION:

Department of Regulatory Agencies

Division of Securities: The General Assembly passed HB 12-1005, which amended § 24-75-601.1, C.R.S., the statute which governs the types of securities in which public funds may be invested. Unit attorneys advise the Division regarding the impact of these amendments, and whether certain investment vehicles may be utilized by public entities investing public funds.

Division of Professions and Occupations: A number of programs underwent sunset review or were modified by legislation. Including the Professional Review of Health Care Providers (i.e., Peer Review) (H.B. 12-1300), the Committee on Anti-Competitive Conduct (LLS No. 12-0357), and pharmacists and prescription drug outlets (H.B. 12-1311), the Board of Licensure for Architects, Professional Engineers, and Professional Land Surveyors (S.B. 13-161), and the Examining Board of Plumbers (S.B. 13-162).

Senate Bill 13-161 continued the Board of Licensure for Architects, Professional Engineers, and Professional Land Surveyors, clarified various definitions, corrected outdated language, and increased title protection. The Board's SAAG assisted the Board in proposing statutory improvements to the Office of Policy, Research and Regulatory Reform.

The sunset bill for the Examining Board of Plumbers (S.B. 13-162) changed the Board's name to the State Plumbing Board, inserted authority for the Board to enjoin inspections by local jurisdictions upon a finding that the jurisdiction is not inspecting in accordance with the State plumbing code, and modified qualifications for State inspectors. The Board's SAAG assisted the Board in proposing statutory improvements to the Office of Policy, Research and Regulatory Reform.

The General Assembly passed HB 12-1065 extending the deadline for Advanced Practice Nurses, with prescriptive authority (granted prior to July 1, 2010) to submit the attestation of Articulated Plan. The deadline was extended from July 1, 2011 to September 30, 2012.

The General Assembly changed the licensing requirements for Nursing Home Administrators with the passage of HB 12-091 and HB 12-1055.

With H.B. 13-1133, the General Assembly allowed electrical inspection of schools by local inspectors, provided the local jurisdiction complies with the State electrical code.

Division of Real Estate: This year, the General Assembly passed an important piece of legislation regarding Colorado's conservation easement tax credit program - S.B. 13-221. Beginning January 1, 2014, landowners seeking conservation easement tax credits will apply for tax credit certificates with the Division of Real Estate. The Director of the Division of Real Estate will determine whether the appraisal supporting the tax credit application is credible. The Conservation Easement Oversight Commission ("CEOC") will determine whether the conservation easement donation is a qualified conservation contribution under the Internal Revenue Code. If the Director determines that an appraisal is credible and the CEOC determines that the donation is a qualified conservation contribution, then the Department of Revenue cannot disallow the conservation easement tax credit on either of these grounds. This is a significant change to Colorado's conservation easement tax credit program, which should result in substantial savings to the state of Colorado by placing decision making regarding appraisals and conservation purpose at the front end of these transactions.

Both the mortgage loan originator regulatory program (S.B. 13-156) and the appraiser regulatory program (S.B. 13-155) underwent sunset review.

Division of Insurance: The General Assembly passed several bills impacting the Division of Insurance, including: HB 13-1266 (Alignment of state insurance law with federal health care law); HB 13-1062 (Requirements and Enforcement laws for Public Adjusters); and HB 13-1225 (the Homeowners Insurance Reform Act). It should be noted that legislation was passed to repeal Cover Colorado in anticipation of the significant changes in state law regarding health insurance coverage.

III) HOT ISSUES:

Department of Regulatory Agencies

Division of Professions and Occupations (previously known as “Division of Registrations”):

Examples of cases handled by the attorneys representing the various boards, committees and programs within the Division of Professions and Occupations include:

Colorado Medical Board v. Jose Salvador Cruz-Martinez, M.D. Dr. Cruz-Martinez is a psychiatrist who was practicing inpatient, adult psychiatric care at Parkview Medical Center in Pueblo in 2007. This Medical Board case concerned Respondent’s care of patient A, a 25-year-old developmentally-disabled adult with historical diagnoses of autism and a seizure disorder. While in Dr. Cruz-Martinez’ care patient A died. Among the Board’s concerns regarding the care of patient A, Dr. Cruz-Martinez failed to consult a neurologist regarding the patient’s seizure activity and failed to ensure the patient’s transfer to ICU upon learning of a critically high sodium level. Further, Dr. Cruz-Martinez failed to do more than simply refer the patient to the hospitalist upon learning of a critically high sodium level. Following the trial and upon exceptions, the Board issued a final disciplinary order of license suspension pending skill assessment and monitoring, followed by probation.

Colorado Medical Board v. Sam Jahani, D.O. Dr. Jahani was an internist, who owned urgent care centers in Delta, Grand Junction and Montrose. He operated his clinics from 2005 until December 2009. After conducting an investigation, the Board found that Dr. Jahani engaged in a pattern of prescribing controlled substances to patients without clinical indication and without properly documenting patient visits or reasons for the on-going prescription practices. After the Board filed a formal complaint in administrative court, Dr. Jahani permanently relinquished his license and agreed never practice medicine in Colorado again.

Colorado Medical Board v. Michael Camarata, M.D. Dr. Camarata made numerous medical marijuana recommendations. The Medical Board determined that the medical marijuana evaluations performed by Dr. Camarata fell below the standard of care because: 1) he failed to perform sufficient physical examinations; 2) he failed to consider established treatments or to formulate complete treatment plans for his patients; and 3) he failed to sufficiently document his evaluations or the reasons for the medical marijuana recommendations. In addition, the Medical Board received complaints that Dr. Camarata over-prescribed opioids and benzodiazepines. The Board determined that Dr. Camarata’s prescribing of these drugs was excessive, and that his prescribing fell below the standard of care. Dr. Camarata agreed to public discipline, including a five-year probationary period, an

evaluation and education at the Center for Personalized Education for Physicians, and monitoring by a Quality Reviewer.

Colorado Medical Board v. Vandna Jerath, M.D. Dr. Jerath was the on-call OB/GYN for an emergency department when a pregnant patient came in complaining of vaginal bleeding. Based on a telephone conversation with the ER physician, Dr. Jerath assumed the patient had an ectopic pregnancy. Dr. Jerath never examined or spoke with the patient before recommending that the ER physician administer Methotrexate, a drug used to terminate ectopic pregnancies. Dr. Jerath misdiagnosed the patient. The patient later learned that she did not have an ectopic pregnancy. Rather, the patient had a normal intrauterine pregnancy. The patient miscarried because of the medication Dr. Jerath recommended. Following a three day trial, the Administrative Law Judge admonished Dr. Jerath's medical license.

Colorado Medical Board v. Toribio Mestas, M.D. Dr. Mestas came to the attention of the Colorado Medical Board after he placed an advertisement in a Trinidad newspaper offering to see patients for medical marijuana evaluations at the "Deuce Tattoo" office in Trinidad. The Board determined that the medical marijuana evaluations performed by Dr. Mestas fell below the standard of care because 1) he did not sufficiently document his patients' medical history ; 2) he did not gather or document sufficient information about the patients' presenting illnesses; 3) he did not document a full assessment of his patients including a rationale for medical marijuana being an appropriate treatment relative to medical treatments with proven efficacy; and 4) he did not formulate complete treatment plans. Dr. Mestas agreed to license discipline inactivating his license for at least two years. The discipline is reported to the national practitioner database.

State Board of Nursing v. Davene Riesmeyer, R.N.: Ms. Riesmeyer backed her car into another car in a parking lot and was found asleep at the wheel. The police found 6 vials of Propofol (4 unused, 1 empty and 1 half empty) in her car, as well as Tramadol tablets. (Propofol is an IV medication used to sedate patients. Tramadol is a narcotic pain reliever). Respondent admitted diverting the propofol from her employer. Respondent was summarily suspended. Ms. Riesmeyer is currently facing charges including use and/or abuse of drugs, conduct constituting a crime and substandard practice.

State Board of Nursing v. Claudette Louise Kelley, R.N., L.P.N.: Ms. Kelley worked at a long-term care facility providing care to elderly patients. Ms. Kelley failed to inform the physician of a change in two patients' conditions, failed to properly assess the patients and left the floor without notifying staff of her whereabouts during a medical emergency involving one of her patients. Ms. Kelley's licenses to practice as a practical nurse and professional nurse were revoked following a hearing for substandard care, substandard practice and failure to make essential entries.

State Board of Nursing v. Maria Romero, C.N.A.: Ms. Romero worked for a hospice. While on duty and driving between patient visits, Ms. Romero was in an automobile accident. She submitted to a "for cause" drug test. She tested positive for Marijuana, Amphetamines, and Methamphetamines. Ms. Romero's certification was revoked following a hearing for substandard care and misuse of controlled substances.

The State Board of Dental Examiners v. Jack Goodrich: Dr. Goodrich attempted to place mandibular and maxillary implants in a patient. Mr. Goodrich did not conduct appropriate diagnostic testing before attempting the placement and due to advanced bone loss, several of the implants could not be placed. Dr. Goodrich stipulated to a letter of admonition.

The Board of Examiners of Nursing Home Administrators v. Aragon-Herrera, N.H.A.: Ms. Aragon-Herrera signed an Interim Cessation of Practice Agreement in lieu of Summary Suspension. Following lengthy negotiations, Ms. Aragon-Herrera permanently relinquished her license to practice as a nursing home administrator, making admissions including that she failed to protect residents' rights, failed to ensure quality of care and quality of life consistent with health and safety of residents, and failed to ensure that required reports were made to CDPHE regarding investigations of harm to residents.

State Board of Dental Examiners v. Brandon Payne, MD, DDS: Dr. Payne administered deep sedation to a patient in 2011. He administered sedation without a complete preoperative medical history, failed to note irregularities in pain medication use, and failed to document an adequate anesthesia record. In June 2012, he agreed to cease performing any sedation that required a permit or privilege beyond his dental license. Dr. Payne stipulated to probation, and his sedation privilege was restricted pending completion of continuing education and an anesthesia practice monitoring plan.

Board of Licensure for Architects, Professional Engineers, and Professional Land Surveyors v. H. Gary Howell: The Board of Licensure for Architects, Professional Engineers, and Professional Land Surveyors initiated disciplinary proceedings against professional engineer Gary Howell. The Board alleged that Mr. Howell failed to meet generally accepted engineering practice standards; failed to protect public safety, health, property, and welfare; and failed to exercise appropriate skill, care, and judgment in the application of building codes in his structural engineering work on the Meeker Elementary School. The school was closed pending repair of the structural issues. The Board sought a two-year suspension of Mr. Howell's license and other discipline. Several weeks before the hearing, Mr. Howell agreed to voluntarily relinquish his license.

Division of Real Estate: Examples of cases handled by the AAG's representing the Division of Real Estate and programs within the Division include:

Colorado Real Estate Commission v. Michelann Cordero: The Real Estate Commission referred a complaint against Michelann Cordero, a licensed real estate broker, to the OAG after an investigation revealed that she had an elderly gentleman purchase properties at an inflated price from her, or someone working with her, often keeping the proceedings from the sale. She then had the gentleman transfer ownership of the property to Ms. Cordero's company. Notice of Charges was filed against Cordero in August of 2011. For various reasons, the Commission agreed to stay the license disciplinary case while a criminal case in Arapahoe County for these activities proceeded. However, after multiple continuances of the criminal case, the Commission successfully requested that the court lift the stay of the administrative proceedings even though the criminal case had not been resolved. Shortly after the stay was lifted, Ms. Cordero agreed to a revocation of her real estate broker's license, a \$2,300 fine, and a \$42,700 fine should she ever reapply for a real estate broker's license.

Colorado Real Estate Commission and the Mortgage Loan originator Board v. Julian Vigil:

Mr. Vigil held both a real estate broker license and mortgage loan originator license when he was hired in 2010 by Kathleen Hughes to sell her house. Mr. Vigil told Ms. Hughes she owed more on her mortgage than the home was worth and would try to get her lender bank to agree to a short sale. Mr. Vigil conned her into wiring him \$34,000 to pay off more of her mortgage and thereby complete the sale of her home but the home remained unsold. After months of delay Mr. Vigil ultimately completed the sale of her home by transferring Ms. Hughes' mortgage loan to his parents, who he had already allowed to move into the vacant home. Mr. Vigil failed to disclose to Ms. Hughes the full terms of the proposed real estate transaction or to provide her with full copies of documents he asked her to sign. Mr. Vigil also used Ms. Hughes' \$34,000 for his personal use, claiming \$4,000 as a commission. Cases against both of Mr. Vigil's licenses were referred to this office seeking revocation, restitution and fines. After filing notice of charges and working with Mr. Vigil to understand the severity of the case against him, the OAG negotiated a settlement of the case for relinquishment of Mr. Vigil's mortgage loan originator license, revocation of his real estate broker license, \$20,000 in restitution payments to Ms. Hughes, and significant fines due if Mr. Vigil ever reapplied for either license.

Colorado Real Estate Commission v. Elizabeth Ann Trott: Ms. Trott, a licensed real estate broker, was referred to this office by the Colorado Real Estate Commission, for violating several provisions of the Colorado Real Estate Practice Act and engaging in the unlicensed practice of law. Ms. Trott represented the seller in the sale of an assisted-living facility, which was a two-part transaction: the sale of the home, and then the sale of the real property on which the facility was located. Ms. Trott drafted and negotiated the terms of an asset purchase agreement for the sale of the business. She conducted the sale of the property as a separate transaction and failed to make the two transactions contingent upon the other. The sale of the home closed, but the sale of the business did not. As a result, the seller was forced to re-purchase her home for a significantly higher price. After extensive settlement negotiations Ms. Trott paid restitution to the seller and agreed to a settlement that included a fine, coursework, suspension, and a public censure.

Colorado Real Estate Commission v. Jay D. Stoner: Mr. Stoner, a licensed real estate broker and residential real estate developer, was referred to this office by the Colorado Real Estate Commission for violating several provisions of the Colorado Real Estate Practice Act, including failing to remit money belonging to others, diverting money belonging to others, and failing to use an escrow or trust account for money belonging to others. Mr. Stoner entered into a purchase contract in which he agreed to sell an undeveloped piece of residential property to a prospective buyer and then build a home on the property. Pursuant to the contract, Mr. Stoner accepted \$30,000.00 in earnest money. However, Mr. Stoner failed to deposit the money in a requisite escrow account and, without knowledge of the buyer, used it to fund the purchase of another unrelated property. Mr. Stoner was unable to recover the earnest money and was therefore unable to complete the sale to the buyer. When the buyer demanded the return of his earnest money Mr. Stoner refused to return it. A formal complaint was filed with OAC on September 21, 2012. A settlement was reached between the parties on February 26, 2013, in which Respondent agreed to pay the total amount of restitution, \$37,875.00, agreed to a probationary license with supervision for five years, a fine of \$3,500.00, and a public censure.

Colorado Real Estate Commission v. Innovative Property Services, LLC ("IPS"): IPS, a licensed real estate company in Colorado, owned by Mr. Brandon Rockhold, provided rental

property management services. A routine, on-site audit of IPS financial records, by DORA investigators, found the company was missing \$35,000, the amount of client/tenant security deposits. Mr. Rockhold eventually admitted to using the funds for his personal use after records indicated he had sole access to the account containing the missing funds. During the course of the investigation, Mr. Rockhold also entered into an agreement to sell his company for profit to another property management company. At the time, clients were completely unaware of their missing funds as the business was only required to remit security deposit funds as tenants changed out, permitting a Ponzi-like scheme to thrive. Shortly before confirming the sale of IPS, Mr. Rockhold ultimately agreed to settle his company license case, thereby requiring that his clients/consumers receive notice of his actions and the discipline agreed upon. On behalf of IPS, Mr. Rockhold agreed to a permanent revocation of the IPS's real estate company license, admissions to converting or diverting funds of others and unworthy and incompetent behavior, and a public censure.

Division of Insurance: Significant cases handled by the Insurance Unit include:

John Alden Life Insurance Company - The Division conducted a market conduct examination of the company indicating the company violated various Colorado insurance laws and regulations pertaining to the company's health insurance business. Prior to issuance of a Final Agency Order, the Commissioner of Insurance called for and, with the guidance of Unit attorneys, conducted a non-adversarial "Investigatory Hearing" under Title 10, C.R.S. This was the first hearing of this type conducted by the Division. The Commissioner ultimately determined that the company violated various provisions of Colorado law and related regulations including, but not limited to, failure of the company's contracts and forms to include required provisions and/or correct/complete provisions for cervical cancer vaccines, hearing aids for minor children, organ transplants and outpatient physical, occupational and speech therapies. The Commissioner also imposed \$85,500 in civil penalties and surcharges.

Unites States Fire Insurance Company and North River Insurance Company - The Division conducted a market conduct examination indicating the companies violated various Colorado insurance laws and regulations related to the company's bail bond business in Colorado. Unit attorneys assisted the Division with negotiating settlements with the companies after the Commissioner issued Final Agency Orders pertaining to the MCEs which assessed \$155,200 in civil penalties against US Fire and \$85,000 in civil penalties against North River. The FAOs also required the companies to develop plans to ensure future compliance with Colorado insurance laws and regulations pertaining to the bail bond business.

Consolidated Medical Services - Unit attorneys prosecuted and successfully settled a case involving a Cease & Desist Order issued against Consolidated and its founder, Joseph Benedetto. CMS/Benedetto operated a website as a vehicle to purportedly sell insurance and recruit "Affiliates" for an internet-based marketing program. The Cease & Desist Order determined that CMS/Benedetto (and their Affiliates) engaged in fraud and the unauthorized transaction of insurance business in Colorado by marketing and selling medical benefit programs to consumers as an alternative to traditional health insurance. The medical benefit programs targeted consumers who had pre-existing conditions and/or who may have been denied traditional major medical insurance. The Cease & Desist Order precludes CMS/Benedetto from conducting any insurance related business in Colorado.

Cinergy Health, Inc. - Unit attorneys prosecuted and successfully settled a case involving Cinergy and Cinergy representative Steven Trattner. Cinergy entered into contracts with various associations and/or purported insurance companies to market limited health benefit plan insurance policies to consumers in many states, including Colorado. Limited health benefit plan insurance policies provide coverage, typically through membership in an association, with insurance limits for individuals and groups that are far lower than those provided by a traditional health insurance policy. Limited health benefit plan insurance policies are typically recommended to be used only in conjunction with and not as an alternative to a traditional major medical or catastrophic coverage policy. The policies sold by Cinergy generally provided first dollar coverage to policyholders (immediate coverage for medical expenses not subject to a deductible) though it capped coverage for certain medical costs and treatment at amounts substantially lower than the actual coverages required by policyholders. Cinergy marketed and sold the policies in Colorado primarily through television advertisements aired in the state and through telephone solicitations into Colorado by unlicensed agents in Florida. Cinergy/Trattner admitted having their agents engage in the unauthorized transaction of the business of insurance in Colorado, that their agents made false and misleading statements to consumers as part of their marketing and advertising, and that they failed to disclose administrative and/or regulatory proceedings in other states. Cinergy/Trattner admitted that they violated various provisions of Colorado law and related regulations and agreed to pay \$110,000 in civil penalties and surcharges.

Minnesota Surety & Trust Company - The Minnesota Supreme Court indefinitely suspended Peter Plunkett, an Austin, Minnesota attorney, from the practice of law, effective February 26th. Mr. Plunkett's suspension is the latest result of a Colorado Division of Insurance (the "Division") action from 2011, in which Minnesota Surety & Trust Company admitted to altering approximately 4,000 bail bond documents, was ordered to pay a \$1.2 million civil penalty, and had their license to do business in the state of Colorado revoked. Mr. Plunkett, as the President and part owner of Minnesota Surety & Trust, directed the alteration of the bail bond documents in an attempt to avoid possible civil penalties that could have resulted from the Division's examination of the documents to determine compliance with Colorado state law. One million dollars of the civil penalty was stayed under the condition that neither Mr. Plunkett or Minnesota Surety & Trust conduct any insurance related business in the state for at least five years.

Division of Securities: The AAGs representing the Division of Securities handled a significant number of complex civil matters. For example:

Joseph v. Clinton Fraley: Unit attorneys prosecuted an injunctive action against Clinton Fraley, his business Wealth by Design, and the Clinton D. Fraley Living Trust on based upon Fraley's fraudulent conduct in obtaining investor funds and then converting those funds to personal use. Fraley took nearly half a million dollars from Denver-area fire fighters under the guise of investing their funds as an investment adviser. However, instead of investing the funds, Fraley took the funds for his own use, purchasing a personal residence and then transferring the residence out of reach of the investors into the Clinton D. Fraley Living Trust. As a result of this action, attorneys in the unit obtained a temporary restraining order and then a permanent injunction barring Fraley and his entity from securities activities. The

Court also entered full damages and restitution against Fraley and imposed a constructive trust over property obtained with investor funds.

Joseph v. Sawano: Unit attorneys representing the Securities Commissioner obtained a temporary restraining order and then a preliminary injunction and order freezing assets and accounts against two licensed investment adviser representatives (Perry Sawano and Brad Hawkins) and investment advisory businesses operated by Sawano and Hawkins (Providence Financial Services, Integrity Financial Solutions, and Integrity Financial Consulting). The Complaint alleges that the Defendants engaged in a scheme to defraud investors through, among other devices, the use of “alternative” investments without making full disclosure that the investments were non-existent in some cases and in other instances merely businesses or ventures that Sawano himself held an interest. The matter is currently pending in the Denver District Court and is currently set for trial in May of 2014.

In addition to traditional injunctive litigation, AAGs representing the Division of Securities are actively managing a number of cases where a receiver has been successfully sought by the DOS to seize investment funds, including Mueller Capital Management, Wealth Systems International and the DelGreene family of funds, Secured Financial Group and the Integrity Funds, Southern Financial Corporation and the Secured Real Estate Lending Fund, Mark Jackson, Dharma Investment Group and the Dharma family of entities, Yost Company, Valley Investments, as well as XL Capital and the Vision and Velocity Funds.

Division of Banking: As outlined below, AAGs representing the Division of Banking continue to take legal action in District Court to protect confidential consumer and regulatory information from improper disclosure.

Colorado Capital Bank, Douglas County Colorado: Before it was closed through emergency action of Banking Board on July 8, 2011, Colorado Capital Bank was a \$718 million State bank with six branches. Ancillary third-party litigation has subsequently arisen in which the parties seek confidential financial information related to customers of Colorado Capital Bank as well as protected regulatory information. Even though Douglas County District Judge White has issued two protective orders, the Defendant borrowers in First Citizen Bank and Trust v. Roger Bumgarner continue seeking protected information. In addition, there is now also a Denver District Court case in which former officers and directors of Colorado Capital Bank and its holding company BankVest are seeking to bolster their defenses through use and disclosure of confidential consumer and regulatory information. Periodic legal action is required to protect the interest of the Division.

Independent Ethics Commission: Over the past fiscal year, AAGs aided the Commission in conducting hearings and issuing final orders for two complaints filed with the Commission, Complaint 12-06 (Arnett v. Brandeau) and Complaint 12-07 (Ethics Watch v. Gessler). AAGs also successfully defended the Commission in an injunctive relief challenge in district court related to Complaint 12-07. AAGs also were able to obtain a dismissal of a district court challenge brought by Secretary of State Scott Gessler in which the Secretary demanded that the court compel the Commission to issue advisory opinions in a particular manner. In addition, AAGs assisted the Commission in its compliance with Colorado’s Open Meetings Laws and

Open Records Act compliance and guided the Commission in its issuance of Advisory Opinions and Position Statements.

Department of Agriculture: Significant cases handled by AAGs representing the Department of Agriculture include:

Stulp v. Schuman: In April 2011, the Bureau of Animal Protection sought an injunction to restrain a rancher, Dean Schuman, permanently from owning, possessing, managing, or tending livestock. The Logan County District Court issued the injunction, after finding Schuman unfit to own livestock and after concluding that Schuman either did not understand good animal husbandry practices or refused to engage them. Schuman appealed the matter to the Colorado Court of Appeals regarding the scope of the injunctive authority of the district court. The Department's AAG argued this matter before the Court of Appeals on August 8, 2012. The Court of Appeals decided the matter on August 31, 2012, and published its opinion, *Stulp v. Schuman*, 2012 COA 144. Importantly, the Court of Appeals concluded that state district courts do have authority to enjoin activity that would otherwise be lawful when the circumstances so require.

Stulp v. Wagner, et al: In 2010, the Bureau of Animal Protection intervened in a second livestock neglect and cruelty case in which over 150 head, in a 1,200-head herd, were found deceased, having become malnourished and ultimately perishing in the winter's elements in Park County. In May 2010, the Department sought possession of the entire herd, removed 379, sold that portion of the herd, and negotiated a temporary restraining order to uphold the status quo of the remainder of the herd pending a trial on whether Mr. Wagner should be permanently restrained from owning, possessing, managing, or otherwise tending livestock in Park County. From December 5 through 9, 2011, the Department's AAGs argued in Park County District Court that Mr. Wagner's pattern and practice of ranching was unsustainable and would lead only to further livestock death and disease. At the close of the trial, the district court judge granted the Department the injunctive relief it sought, restraining Mr. Wagner from owning, possessing, or managing cattle in Park County, Colorado. Although Wagner filed a Notice of Appeal, he failed to file an opening brief. The permanent restraining order remains in effect.

Colorado State Fair Transitions to a Cashless Fair: In early 2013, the Colorado State Fair Board of Authority decided that all vendors on its grounds would use pre-paid cash cards to effect all sales to patrons for food, beverages, specialty rides, and alcohol for the 2013 Colorado State Fair and Industrial Exposition. While the contractor providing the service sought compensation from the Fair in the form of all un-used, pre-loaded cash remaining on the cards at the close of the Fair, the Department's AAG identified the legal issue with gift-card balances, advised the board, and worked with the Fair's General Manager and the Department's CFO to negotiate a compensation package to the contractor and to draft the initial contract, negotiate revisions, and finalize the contract in time for effective implementation at the 2013 Fair.

Low Level Aerial Applicators, Inc.: In August 2012, the Department's Pesticide Enforcement Program learned that an aerial applicator may have allowed pesticide to drift onto homes and homeowners' associations surrounding a field in Larimer County where the applicator had

made an application. After investigation, the Department determined that it had grounds to believe that the applicator had, in fact, drifted pesticide onto a private individual's home and onto two homeowners' associations. After finalizing its investigation and providing Low Level the opportunity to respond, the Department referred the matter to its AAGs who initiated settlement negotiations without success. The Department's attorneys have filed a notice of charges, alleging drift onto a private individual's residence and onto two homeowners' associations.

Mined Land Reclamation Board: Significant cases handled by General Counsel for the MLRB include:

Cotter Corporation v. MLRB and the Division of Reclamation, Mining and Safety: Cotter Corporation holds a reclamation permit for the Schwartzwalder Mine, an inactive uranium mine in Jefferson County. The mine is located near Ralston Creek. Ralston Creek flows into Ralston Reservoir, which is a drinking water source for Denver, Arvada and other communities. Cotter ceased production at the mine in 2000. When it was active, Cotter dewatered the mine. After mining ceased, the mine was allowed to fill with water, eventually reaching a level at least twenty-five feet above the level of Ralston Creek. After a hearing, the MLRB found Cotter that the level of the mine water is creating a hydrologic gradient toward Ralston Creek, allowing mine water to pollute it. The MLRB found Cotter in violation of the Mined Land Reclamation Act for failing to minimize disturbances to the hydrologic balance, failing to handle toxic-forming material to protect the drainage system from pollution, and failing to protect areas outside of the affected land from damage. The MLRB ordered Cotter to begin dewatering the mine, treat the water removed, and pay a \$55,000 civil penalty. The MLRB subsequently found Cotter had taken no action to comply with its order; the Board issued Cotter a cease and desist order and levied an additional \$39,000 civil penalty. Cotter filed an appeal of both the Board's initial order and its cease and desist order. After extensive briefing, the court affirmed the Board's orders, rejecting all of Cotter's arguments and finding that the initial order and cease and desist order were reasonable, proper and supported by substantial evidence. Cotter filed an appeal of the District Court's orders with the Court of Appeals.

State Personnel Board:

Colorado Department of Human Services v. Maggard: The AAG for the Personnel Board successfully argued this matter before the Colorado Supreme Court, resulting in an affirmation of the straightforward and efficient standard of review applicable to appeals from Personnel Board decisions. The Personnel Board AAG's also assisted with rulemaking related to procedures applicable to state employees in the classified system.

IV) WORKLOAD MEASURE:

WORKLOAD INDICATORS

As a result of DORA's increased use of the Expedited Settlement Program within the Division of Professions and Occupations and Division of Real Estate, cases not requiring referral for legal services have been resolved within the agency. Consequently, the cases that have been referred

to the Office of the Attorney General have been more complex and contentious. Consistent with the client's expectation, AAGs have continued to aggressively file or resolve most cases within a one-year period of time. AAGs have responded to this goal without compromising their commitment to prioritize the most egregious cases and promote public protection. Furthermore, the ongoing mortgage crisis has resulted in increased litigation surrounding the regulation of mortgage loan originators. Under HB 10-1141 enforcement authority shifted to a Board model, as well as to Department of Regulatory Agencies oversight. As has been the case for the past few years, substantial state and federal statutory and regulatory changes to the Mortgage Loan Originator Program have required a significant amount of legal time to be allocated to the drafting and review of newly promulgated rules and position statements.

I. BACKGROUND INFORMATION: CIVIL LITIGATION AND EMPLOYMENT LAW SECTION

The employees of the section defend all state agencies, institutions of higher education, officials, and employees in litigation in state and federal court, as well as administrative hearings. The section also acts as general counsel to the Department of Personnel and Administration, Division of Risk Management (Risk Management), the Colorado Department of Corrections (CDOC), the Colorado State Board of Parole (Parole Board), the Colorado Civil Rights Division (CCRD), the Colorado Transportation Commission, and the Colorado Department of Transportation (CDOT), providing quick and thorough legal advice regarding the many issues that arise on a daily basis. The section advises all state agencies and institutions of higher education regarding employment, personnel and workers' compensation matters. The section is divided into six units: Corrections, Employment Personnel and Civil Rights, Employment Tort, Tort Litigation, Transportation and Workers' Compensation. A brief description of each unit follows.

Corrections Unit:

The Corrections unit is responsible for the representation of CDOC, the Parole Board, and all employees of those agencies, in state and federal lawsuits and appeals alleging tort claims, claims of various constitutional violations, construction claims, requests for documents and appearances in court, challenges to sentences, appeals of internal inmate discipline and classification, environmental matters, religious practices, medical treatment claims, and prison conditions. The unit represents other agencies who are sued by inmates. The unit acts as a general service law firm to CDOC and the Parole Board except in the areas of personnel and contracts. The unit members give advice on a daily basis to representatives of CDOC and the Parole Board on the many complicated issues that arise in a prison and parole context. The attorneys' provide advice regarding proposed legislation as well.

Employment Personnel and Civil Rights Unit:

The Employment Personnel and Civil Rights unit defends state agencies, institutions of higher education, and employees in administrative hearings before the State Personnel Board and before the appellate courts in matters involving classified employee grievances and appeals of disciplinary actions. The cases involve claims arising from the Colorado Constitution, the State Personnel System Act, the state whistleblower act, the Colorado Anti-Discrimination Act, and related federal and state statutes. The attorneys also provide advice and risk reduction training to state agencies and institutions of higher education on issues such as hiring, managing, and disciplining employees, and represents state agencies and

institutions of higher education when a custodian of records or employee receives an personnel related subpoena. The unit provides legal advice to the CCRD within the Department of Regulatory Agencies in connection with CCRD's investigation of charges of employment, housing, and public accommodations discrimination and cases brought based as a result of those investigations. The unit also assists CCRD on all transactional legal matters. The unit prosecutes civil rights cases through all stages of appeal and defends challenges to the authority of the Colorado Civil Rights Commission. Through the end of FY 2012-13, the unit also represented and defended the Special Funds Unit of the Division of Workers' Compensation within the Department of Labor and Employment. This Special Funds Unit function transferred to the Workers' Compensation Unit in August 2013.

Employment Tort Unit:

The Employment Tort unit defends state agencies, institutions of higher education, and employees in state and federal court employment litigation. The attorneys handle the cases from inception through appeal. The cases involve claims arising under a myriad of federal and state statutes, including Title VII of the Civil Rights Act, the Americans with Disabilities Act, the Fair Labor Standards Act, The Family Medical Leave Act, the Equal Pay Act, the Age Discrimination in Employment Act, the state whistleblower act, and other employment laws as well as federal civil rights laws. The attorneys also provide advice and risk reduction training to state agencies and institutions of higher education regarding employment law. The unit provides day to day advice to Risk Management on questions of coverage, indemnity, settlements, and conflicts.

Tort Litigation Unit:

The Tort Litigation unit defends state agencies, institutions of higher education, and employees in lawsuits seeking damages for personal injury and property damage, and those brought pursuant to federal law (except for employment claims). The unit also provides day to day advice to Risk Management on questions of coverage, indemnity, settlement, and applicability of the Colorado Governmental Immunity Act (CGIA). Members of this unit aggressively defend the state and seek to minimize the monetary liability of the state in a variety of law suits. In addition, the unit provides most of the Conflicts Counsel services to regulatory agencies and boards in cases where line attorneys act as prosecutors in regulatory actions before the agencies and boards and are therefore prevented from advising the decision makers.

Transportation Unit:

The Transportation unit acts as a general service law firm to the CDOT and the Colorado Transportation Commission, with the exception of personnel and tort

matters. The unit also represents the Colorado Bridge Enterprise and the Colorado High Performance Transportation Enterprise, which are government-owned enterprises and divisions within CDOT. The members of the unit advise CDOT regarding a myriad of legal issues. The unit prosecutes all condemnation actions, defends inverse condemnation cases, and administrative actions. The unit also handles access control, highway beautification, and billboard location disputes, and protests brought under the Procurement Code. The unit advises CDOT in construction matters and represents CDOT in construction dispute review boards, arbitration and litigation. The unit also provides advice regarding environmental and real estate issues and defends and negotiates settlements in these areas. Members of the unit review, revise, and approve CDOT contracts and assist in rulemaking, legislation and any other legal matters that arise.

Workers' Compensation Unit:

The Workers' Compensation unit works with Risk Management and its third party administrator to defend state agencies, institutions of higher education, and employees in workers' compensation matters. The attorneys manage litigation from inception through hearings and appeals, including fully contested claims, challenges to specific disability and medical benefits, penalty allegations, petitions to review, and cases with subrogation or employment law issues. The attorneys also represent the Special Funds Unit of the Department of Labor and Employment, Division of Workers' Compensation and the Subsequent Injury fund and Major Medical Fund in workers' compensation cases. The attorneys provide day-to-day legal advice to Risk Management's Workers' Compensation Division, its third party administrator, state agencies and the Special Funds Unit, regarding workers' compensation law, liability exposure and settlements.

II. PRIOR YEAR LEGISLATION

HB13-1323: Requiring CDOC to obtain clarification if a court issued mittimus omits instruction concerning whether a sentence is to be served consecutively or concurrently.

This act requires that a court confirm that the mittimus properly reflects the sentencing order of the court and includes all necessary information as to whether the sentence is to be served concurrently or consecutively. If CDOC receives a mittimus that does not clearly indicate whether the defendant sentence or sentences are to be served consecutively or concurrently, it requires that CDOC reach out to Judicial within two business days after receipt of the mittimus. Furthermore, it requires that a court respond to CDOC and clarify the mittimus in question in writing within two business days after receiving the request. Finally, the act stipulates that until the Department obtains clarification of the mittimus

from the court, that it shall not make any determination of the defendant's parole eligibility date or mandatory release date.

HB13-1020: Concerning evidence collect in connection with a sexual assault.

The act requires the executive director of the department of public safety to adopt rules concerning forensic medical evidence of a sexual assault (forensic evidence) collected by law enforcement agencies and appropriates the sum of \$6,351,002 for the Colorado CBI for the testing of backlog evidence related to the implementation of this act.

HB13-1109: Concerning the application of mandatory protection orders to parolees.

This act clarifies that a defendant shall not be deemed to have been released from incarceration until the defendant has also been discharged from any period of parole supervision that follows such incarceration with regard to protection orders. Further, the act restrains the person charged from harassing, molesting, intimidating, retaliating against, or tampering with any witness to or victim of the acts charged.

SB 13-210: Concerning employment conditions for correctional officers.

The act changes the work period for correctional officers from a 28 day cycle to a 14 day work cycle and requires that overtime be paid when the number of hours worked exceeds 85 hours in a 14 day period. The act also establishes that corrections officers who work 12 or more hours in one 24 hour period shall be paid the amount of 1.5 times their regular rate of pay for the time that they worked that exceeded 8.5 hours. Furthermore, the act requires that all department employees receive a clear and accurate pay stub and requires that the Executive Director of the DOC collaborate with DPA and OIT on existing efforts to modernize the state's personnel timekeeping system. Finally, the act designates a portion of the Fort Lyon property as a residential community for the homeless and makes and appropriation.

SB 13-1011: Concerning authorization of civil unions

This act provides eligible couples the opportunity to obtain the benefits, protections, and responsibilities afforded by Colorado law to spouses of the same gender. In addition, the act protects individuals who are or may become partners in a civil union against discrimination in employment, housing and in places of public accommodation. Finally, the act allows for the courts to offer same-sex couples the equal protection of the law and to give full faith and credit to recognize relationships legally created in other jurisdictions that are similar to civil unions and that are not otherwise recognized pursuant to Colorado law. CDOC is in the

process of making a number of changes to its policies, operations, and procedures as a result of this act. Among other items, the CDOC must adjust Administrative Regulations including AR 800-06, develop communications plans with the wardens and determine any potential custody issues that could result from the passage of this legislation.

SB 13-197: Concerning preventing persons who have committed domestic violence from possessing firearms.

This act stipulates that when the court subjects a person to a civil protection order to prevent domestic abuse, the court, as part of that order, will require the person to refrain from possessing or purchasing any firearm or ammunition for the duration of the order and relinquish, for the duration of the order any firearm or ammunition in the respondent's immediate possession or control or subject to their control.

SB 13-216: Concerning youthful offenders within the CDOC.

The act recreates and reenacts, with amendments, certain provisions relating to the sentencing of young adult offenders to the youthful offender system in the CDOC, which provisions were repealed on October 1, 2012. The provisions allow certain young adult offenders to be sentenced to the youthful offender system. A "young adult offender" means a person who is at least 18 years of age but under 20 years of age at the time the crime is committed and under 21 years of age at the time of sentencing. The act also requires that the on or before October 1, 2013, and on or before each October 1 thereafter, the department shall report to the judiciary committees of the House and Senate concerning the implementation of the new PREA policies within the youthful offender system.

HB 13-1136: Concerning the creation of remedies in employment discrimination cases brought under the Colorado Anti-Discrimination Act.

This bill expands the remedies for persons found to be discriminated against in employment to include compensatory damages, punitive damages in some situations, and attorney fees. The bill requires state employees to go to state court to obtain additional remedies after they receive a decision finding discrimination from the state personnel board. The bill also amends the definition of age and requires that the Colorado Civil Rights Commission set up a voluntary working group to reduce instances of discrimination and unfair employment practices.

HB 13-1222: Concerning the expansion of the group of family members for whom Colorado employees are entitled to take leave from work under the federal "Family and Medical Leave Act of 1993".

This bill expands the group of family members for whom employees make take FMLA leave to include a person to whom the employee is related by blood, adoption, legal custody, marriage, or civil union or with whom the employee resides and is in a committed relationship.

HB 13-1298: Concerning employment policies to non-classified state employees.

This bill amends the language of the senior executive service statute to clarify that the employees have no right to another position in the state and their pay is set by State Personnel Director's policy.

HB 13-1294: Concerning a clarification that the judicial department is included in the definition of "public entity" for purposes of the CGIA.

This bill amended the CGIA to include the judicial department in the definition of "public entity."

SB 13-023: Concerning an increase in the limitation on the amount of damages that may be recovered by an injured party under the CGIA,

This bill, for the first time in about 27 years, amended § 24-10-114, C.R.S. to increase damages caps payable on tort claims against public entities and public employees. Increases passed were very significant and provide for regular adjustment of damages caps to keep pace with inflation.

SB 13-288: Concerning the process by which the general assembly approves recommendations made by the State Claims Board for an additional payment to claimants that exceeds the maximum liability under the CGIA

This bill amended § 24-10-114(5)(b), C.R.S. to create a non-judicial path to compensation for Lower North Fork fire victims.

HB 13-1292: Concerning modifications to procurement requirements for government contracts related to U.S. domestic employment (Keep Jobs in Colorado Act).

This bill makes a number of changes to state laws pertaining to government contracting and procurement law. The bill impacts the Transportation unit who will work with CDOT to promulgate rules required by the legislation and to revise procurement methods and policies for road and bridge construction to comply with the legislation.

III. HOT ISSUES

1. *Montez v. Ritter* ADA litigation.

After an eight week hearing, the CDOC was determined to be in substantial compliance with all aspects of the Remedial Plan in the class action lawsuit, *Montez et. al. v. Ritter et. al.* The Order finding substantial compliance was issued on September 11, 2012. A two year monitoring period began October 1, 2012. This case was brought against the CDOC pursuant to the Americans with Disabilities Act and the Rehabilitation Act. The case was settled in 2003. The settlement included two major components. The first are offenders who believed they had been injured by discrimination against them based on a disability were allowed to file individual claims for damages. These claims were handled by special masters appointed by the federal court. Over 1,400 claims were filed and resolved. The state paid less than \$50,000 overall on these claims. The second component was payment of plaintiffs' attorneys fees and the special masters' fees by Risk Management.

2. Sex Offender Lifetime Supervision Act

Implementation of changes to the provision of sex offender treatment to offenders sentenced under the Sex Offender Lifetime Supervision Act. If an offender is sentenced under the Lifetime Act, the offender receives an indeterminate sentence. The sentence specifies a minimum period of incarceration to life. An offender must serve the minimum sentence before being eligible for parole. To be eligible the offender must have successfully progressed in treatment. Offenders are claiming that they are being denied access to treatment and have thus been given a life sentence. A recent study indicated revealed that changes need to occur with respect to the provision of treatment to offenders.

3. Mittimi requiring consecutive sentencing by the courts

Completion of the ten year audit of all CDOC mittimi requiring consecutive sentencing by the courts. The CDOC is working with the State Court Administrator's Office to identify offenders who have been sentenced to CDOC for crimes which statutorily carry consecutive sentences. The mittimus of each offender is being reviewed to see if the sentence entered at DOC was for a consecutive sentence. In those cases where a person is serving a sentence for a crime which carries a statutorily required consecutive sentence, but the person is NOT serving a consecutive sentence, the inquiry is then sent to the court to

determine whether the sentence was issued in error. The CDOC reviewed approximately 8,607 sentences. Of the 8,607, 3,249 had potential sentencing problems. Upon secondary review, 1,807 sentences were sent to the courts for review.

4. Mentally Ill Offenders in Administrative Segregation

Reviewing and revising CDOC policies pertaining to housing mentally ill offenders in Administrative Segregation. The CDOC has several cases relating to extended confinement in Administrative Segregation in which offenders are not permitted outdoor exercise. In addition, recent trends across the country as well as communications from the ACLU here indicate that litigation relating to extended confinement in administrative Segregation is detrimental to offender's mental health and exacerbates mental health problems in offenders with existing mental health problems.

5. Parole Reforms

Due to recent events, the CDOC with assistance from the Corrections unit, is conducting a review of policies and procedures associated with monitoring offenders on parole.

6. Execution Protocols

CDOC and the Corrections unit is involved in litigation regarding execution protocols and working on protocol changes.

7. Implementation of Amendment S.

Amendment S was a referendum to amend the Colorado Constitution that was approved by the voters in November 2012. The amendment increased the number and types of state employees who may be exempt from the state personnel system; changed testing and hiring procedures for filling vacancies in the state personnel system; expanded hiring preferences for veterans; and adjusted the terms of service and duties for members of the State Personnel Board, and the standard to remove certain members. The Employment/Personnel and Civil Rights unit has been assisting the state personnel director and state agencies with changes to personnel rules and processes in order to conform to the voter approved changes.

8. Challenge to Exempt Positions in Higher Education

Article XII, section 13 of the Colorado Constitution provides that “administrators” of educational institutions and departments “may be exempt by law” from the state personnel system. Section 24-50-135, C.R.S. implements this provision by allowing presidents of institutions of higher education to exempt certain “professional” positions and positions funded by “auxiliary activities.” The definitions of “professional” and “auxiliary activities” are defined in the statute. Colorado WINS, the exclusive employee organization for state classified employees, first challenged the facial constitutionality of the statute in a petition for declaratory action to the State Personnel Board. After the petition was denied for lack of jurisdiction, Colorado WINS filed challenges to the statute as it was applied to several different positions at Colorado Mesa University, Adams State University, and the Colorado School of Mines. The matter is set for hearing before the State Personnel Board, and subject to appeal to the Court of Appeals.

9. Workers’ Compensation Representation within the Department of Law

The section added the Workers’ Compensation Unit, a new unit that handles the representation of the Risk Management’s Workers’ Compensation Division and the Special Funds unit. The unit will share a First Assistant with the Employment Tort Unit. This new unit employs one Senior Assistant Attorney General, two Assistant Attorneys General, and one Legal Assistant. The First and Senior AGs will serve as Risk Management’s lead counsel for workers’ compensation advice and litigation. The unit’s lawyers will litigate workers’ compensation claims, oversee the litigation by outside counsel and provide advice to state agencies. As this is a new program within the Department of Law, it is unclear what the workload numbers will be for the upcoming year.

10. Lower North Fork Fire

The Tort and Employment Tort litigation workload was strongly affected by the Lower North Fork fire mass-tort litigation filed in state district court. The litigation includes claims of 22 insurers, which seek to recover amounts paid on fire damage claims, and more than 100 claims on approximately 55 properties affected by the fire. The units have been assisted by attorneys from several other units in the Department of Law. It is expected that the litigation will continue to require significant commitment of time and personnel during the upcoming year.

11. Colorado Bridge Enterprise litigation.

The TABOR Foundation sued the CBE, the Colorado Transportation Commission and individual Transportation Commissioners in their official capacities, claiming that the Bridge Safety Surcharge authorized by SB09-108 constituted a “tax” rather than a “fee” requiring statewide voter approval and also claiming that \$300 million in bonds issued by the Bridge Enterprise in December 2010 to fund “designated bridge” repair and reconstruction projects required voter approval. The lawsuit sought a declaration that the Bridge Safety Surcharge and bonds are illegal and should be enjoined.

A two-day bench trial held before Judge Michael Martinez of Denver District Court on May 13-14, 2013. The lawsuit was defended by both the Transportation unit and outside counsel retained on behalf of the Transportation Commission and the individual Transportation Commissioners. On July 19, 2013, Judge Martinez issued his final order and CBE won on all issues. Judge Martinez concluded that the bridge safety surcharge was indeed a fee and not a tax and held that CBE was an “enterprise” under TABOR because it did not receive impermissible “grants” from CDOT exceeding the 10 percent limitation on state and local government revenue in any fiscal year. The Court concluded that federal money provided to CBE was exempt from the 10 percent limitation and the value of bridges transferred by CDOT to CBE for replacement or repair did not violate the 10 percent limitation. Therefore, bonds issued by CBE without a vote of the people did not violate TABOR. Judge Martinez’ decision is subject to appeal.

12. High Performance Transportation Enterprise.

The HPTE worked throughout FY13 to pursue a concession agreement for construction, operation and maintenance of “managed lanes” on U.S. Highway 36 and I-25. This will be the first concession agreement involving private operation and maintenance of a public highway sought by a state entity. HPTE selected a concessionaire and reached commercial close in June 2013. The Transportation unit actively assisted with the drafting of the concession agreement and negotiation of concession terms. The Transportation unit continues to assist with the project as HPTE and the Concessionaire work to reach financial close by October 2013.

13. Dispute Review Boards

CDOT has revised its specifications for Road and Bridge Construction to include a process for disputes to be heard by Dispute Review Boards. Throughout FY13, the Transportation unit advised CDOT on disputes and prepared claims to be heard at formal Dispute Review Board hearings. The Transportation unit anticipates its participation in this dispute process to continue in FY14 and future years.

IV. WORKLOAD MEASURES

The workload measurements below do not reflect all areas of work these units address on behalf of clients. The measurements below are presented to provide a representation of the type and gravity of work each unit performs throughout each year.

Corrections Unit:

Workload Measure	Unit	FY 12 Actual	FY 13 Actual	FY 14 Estimate	FY 15 Request
New cases	Corrections	336 (202 inmate, 93 Risk Mgmt, 41 advice, 0 assigned to outside counsel)	253 (145 inmate, 72 Risk Mgmt, 36 advice, 0 assigned to outside counsel)	350	350
Billable hours		16,860	16,294	17,000	17,000

Employment/Personnel and Civil Rights Unit:

Workload Measure	Unit	FY 12 Actual	FY 13 Actual	FY 14 Estimate	FY 15 Request
Personnel cases opened	Employment Personnel	240	233	250	275
Special funds (SIF and MMIF) cases opened		6	1		
Civil rights matters opened (including hearing worthiness analysis and probable cause sufficiency analysis)		18	12	15	15
Billable hours		18,690	19,579	21,000	21,000

Employment Tort Unit:

Workload Measure	Unit	FY 12 Actual	FY 13 Actual	FY 14 Estimate	FY 15 Request
New cases opened	Employment Tort	21 new cases with 123 claims	6 new cases with 12 claims	15 new cases with 105 claims	20 new cases with 140 claims
Cases and claims handled in-house		54 cases with 554 claims	43 cases with 174 claims	40 cases with 280 claims	40 cases with 280 claims
Cases and claims handled by outside counsel		5 cases with 13 claims	5 cases with 13 claims	1 case	1 case
Billable hours		9,940	7,435	7,500	8,500

Tort Litigation Unit:

Workload Measure	Unit	FY 12 Actual	FY 13 Actual	FY 14 Estimate	FY 15 Request
New cases opened	Tort Litigation	89	86	90	90
Notices of claims received and reviewed		1,843	1,835	1,850	1,850
Conflicts cases handled (new FTE added in FY 11)		60	60	63	63
Billable hours		19,397	20,115	22,500	22,500

Transportation Unit:

Workload Measure	Unit	FY 12 Actual	FY 13 Actual	FY 14 Estimate	FY 15 Request
New cases filed	Transportation	41	39	40	40
Pending cases		42	35	50	50
Number of trials		0	3	2	2
Contested hearings		6	14	10	10
Condemnation cases resolved		14	16	15	15
Contracts reviewed		620	410	400	400
Billable hours		13,083	11,500	13,000	13,000

I) BACKGROUND INFORMATION: NATURAL RESOURCES AND ENVIRONMENT SECTION (LSSA).

Introduction to the Natural Resources and Environment Section

The Natural Resources and Environment Section protects and defends the interests of Colorado and its citizens in all areas of natural resources and environmental law. The Section, on behalf of the Colorado Department of Natural Resources (DNR) and the Colorado Department of Public Health and Environment (CDPHE), represents and advises state agencies, boards and commissions who regulate the development, use and conservation of the State's natural resources and protect the quality of the environment.

Section attorneys, with the support of legal and administrative assistants, provide general legal advice and represent our clients in administrative matters, rulemaking hearings, transactional matters, enforcement actions, and judicial proceedings. We help to protect legal interests in natural resources and ensure compliance with environmental laws.

CDPHE Clients

Water Quality & Radiation Unit

This Unit represents the divisions and commissions of CDPHE responsible for protecting and improving the quality of our State's water resources. The Unit also represents the division of CDPHE charged with controlling radioactive materials. Specifically, the Unit provides legal counsel to the Executive Director's Office, the Radiation Management Program, the Water Quality Control Commission, the Water Quality Control Division, the Water and Wastewater Facility Operators Certification Board, the Office of Administration, the Office of Policy and Public/Private Initiatives, the Uranium Special Projects Unit, and the Consumer Protection Division.

Air Quality Unit

This Unit represents the divisions and commissions of CDPHE responsible for improving and protecting our State's air quality. Specifically, the Unit provides legal counsel to the Executive Director's Office, the Air Quality Control Commission, and the Air Pollution Control Division. The Unit also represents the Colorado Energy Office.

Hazardous & Solid Waste Unit

This Unit represents the Hazardous Materials & Waste Management Division regarding the storage, treatment and disposal of solid and hazardous waste. The Unit ensures contaminated sites are promptly and thoroughly cleaned up by those responsible for the contamination, and pursues enforcement actions when appropriate. The Unit advises the Division on EPA-lead cases to ensure State input is incorporated into federal cleanup actions. The Unit also provides legal advice to the Petroleum Storage Tank Committee, which oversees reimbursement of cleanup costs under the Petroleum Storage Tank Fund.

DNR Clients

Water Conservation Unit

The Unit assists Colorado Water Conservation Board (CWCB) to adopt and implement programs regarding instream flow protection, recreational in-channel diversions, flood management, water conservation and weather modification. The Unit helps draft contracts for CWCB's grant and loan program which provides funding for many purposes including water studies, conservation efforts, water rights purchases, reservoir construction, and dam rehabilitation. The Unit also acts to acquire and protect water rights on behalf of CWCB, Colorado Parks and Wildlife, the State Land Board, the Department of Transportation, and the Department of Corrections.

Water Resources Unit

This Unit represents the Division of Water Resources (also known as the Office of the State Engineer) including the State Engineer, the seven Division Engineers, the Colorado Groundwater Commission, and the Board of Examiners for Water Well Contractors. The Unit represents its clients in all matter regarding the administration of water rights, including hearings and water court litigation over applications for new water rights, changes to existing water rights, plans for augmentation, objections to well permit issuances and denials, curtailment of illegal water uses; challenges to State Engineer decisions, and other water rights related matters.

Resource Conservation Unit

This Unit represents the Oil and Gas Conservation Commission, the Division of Reclamation, Mining and Safety, the Mined Land Reclamation Board, the Colorado Coal Mine Board of Examiners, the Colorado Inactive Mines Program, and the Mine Safety Unit. These clients implement and enforce numerous programs including regulation of reclamation of land that has been impacted by mining operations, regulation of oil and gas operations, and closure of inactive or abandoned mines. The attorneys help to ensure that the mining and oil and gas industry comply with all environmental protection and reclamation requirements.

State Trust Lands Unit

This Unit primarily represents the State Board of Land Commissioners (also known as the Land Board). The Unit is responsible for all legal matters involving the Land Board, including advising on the management of real property (land, minerals, and water) throughout the state, and representing the Land Board in any legal or administrative proceedings. The Unit assists the Land Board in its trustee capacity as manager of eight trusts of land granted to the state by the federal government, the largest of which is the school lands trust for the benefit of public K-12 education in Colorado. The Land Board manages the trusts under the constitutional and statutory provisions governing the trusts to generate revenue or other benefits for the purposes of the respective trusts. Given the

Board's role to generate revenues, representation of the Land Board is similar in many respects to representation of a for profit corporate business entity and, as such, raises issues frequently not presented by other state agencies.

Parks and Wildlife Unit

This Unit represents the Division of Parks and Wildlife and the Parks and Wildlife Commission on all legal matters, including advising on the management of the Division's significant real property and water rights holdings and assisting to implement its numerous regulatory programs (hunting, fishing, threatened and endangered species, recreational trails, vessels, snowmobiles, Off-Highway Vehicles, river guides). Parks and Wildlife generates its own revenues through the sale of hunting and fishing licenses, parks passes, and other permits and uses these funds to manage all wildlife and park and outdoor recreation resources.

II) PRIOR YEAR LEGISLATION

Air Quality Unit

SB 13-273 amended the powers of the Air Quality Control Commission in C.R.S. § 25-7-105 to authorize the analysis of biomass burning equipment and emissions associated with that equipment.

SB 13-152 amended the asbestos control requirements with § 25-7-509.5 which requires disclosure of asbestos inspections when applying for a building permit. It also extended the Sunset Date for Asbestos Control program in § 25-7-501, et seq.

HB 13-1300 repealed a reference to a previously repealed statute concerning the provisions of § 25-7-133 governing the State Implementation Plan Legislative review process.

Water Conservation Unit

HB 13-1248 requires the CWCB to administer a pilot program to test the efficacy of fallowing-leasing water as an alternative to permanent agricultural dry-up. The pilot program requires the CWCB to issue guidelines concerning the pilot program to determine how the potential pilot projects are to be selected, which regions should be included, and how much water is appropriate for the pilot program. The pilot program allows up to ten pilot projects lasting up to ten years in duration to test the practice.

Water Resources Unit

HB 13-1130 adds a provision to the existing interruptible water supply agreement (IWSA) statute allowing an IWSA to be extended for two additional ten-year periods, even if the IWSA was exercised during the first ten-year period.

SB 13-019 provides that for Water Divisions 4, 5 and 6 only, when determining the historical consumptive use of a water right, the water judge shall not consider a decrease in use for the year that the water right was under a Federal land conservation program or the water right was under a “formal” conservation plan or land fallowing program.

SB 13-041 changes the common law rule that the storage of water alone, without subsequent application to beneficial use, is not a beneficial use of water and is insufficient to make a conditional storage right absolute. The bill allows a conditional storage right to be made absolute for all of its decreed beneficial uses solely by storing the water in the decreed storage structure. The bill also allows a conditional storage right for a particular feature of an integrated water supply system to be made absolute prior to the system operator utilizing all existing absolute decreed water rights that are part of the system to their full extent.

SB 13-072 amend the existing statute which states that a Denver Basin well permitted after July 1, 1991 did not have a final permitting requirement. SB13-072 eliminated that date so that Denver Basin wells no longer need a final permit.

SB 13-74 provides that, for the purposes of determining lawful historical use of a water right, if a decree entered before January 1, 1937 establishes an irrigation water right and does not expressly limit the number of acres to be irrigated, the lawful maximum amount of irrigated acres equals the maximum number of acres irrigated in compliance with all express provisions of the decree within the first 50 years after entry of the original decree. The same standard applies if there is an action initiated by the State Engineer or another person alleging expanded or unlawful use of a water right.

SB 13-75 provides that reducing the use of designated ground water for conservation purposes shall not be grounds to reduce the maximum annual volume of an appropriation, the maximum pumping rate, or the maximum number of acres that have been irrigated. It does not apply in a proceeding to change the use of the appropriation. This bill will not have any significant effect on the actions of the Ground Water Commission or its staff.

SB13-078 allows water right owners to reconcile the actual locations of their diversion structures with the legal descriptions in their original water court decrees if the diversion structures have always been in the same physical locations since the original decrees and the structure has been used to continuously divert water. For surface water rights, the structure must be within 500 feet of the decreed location. For ground water rights, the structure must be within 200 feet of the decreed location.

State Trust Lands Unit

HB 13-1274 granted the State Board of Land Commissioners the authority to enter into lease-purchase agreements to acquire, construct, renovate, and improve commercial real property that the Board will then lease as office space for state agencies or other tenants. It also created the commercial real property operating fund for lease revenues generated

from all commercial real property investments held by the Board provides for the use of those funds for contracting for services and procurement.

III) HOT ISSUES

Water Quality & Radiation Unit

This Unit has spent substantial resources defending a lawsuit filed by a community group challenging the financial surety for decommissioning and the closure plans for the Cotter Corporation's Cañon City uranium milling facility. The State prevailed in court in March 2013. Since then the Unit has spent substantial resources responding to Colorado Open Records Act (CORA) requests concerning the Cotter Cañon City Uranium Mill by the same community group. Documents were made available under three separate CORA requests except for those where privileges were claimed. For two of the CORA requests, the group seeking documents asked the court to review the assertions of privilege. The Unit successfully defended the privilege claims in one CORA hearing, and a hearing on the second request is scheduled for October 2013. It is anticipated that additional CORA requests and demands for hearings will be made requiring additional attorney resources.

Water Conservation Unit

HB 13-1248 requires the CWCB to administer a pilot program to test the efficacy of fallowing-leasing water as an alternative to permanent agricultural dry-up. The pilot program requires the CWCB to issue guidelines to determine how the potential pilot projects are to be selected, which regions should be included, and how much water is appropriate for the pilot program. It is anticipated that the development of guidelines will require input from attorneys for both CWCB and DWR.

Resource Conservation Unit/Water Resources Unit

Executive Order 2013-004 requires the COGCC to undertake a strategic review of its enforcement program, penalty structure, and imposition of fines to evaluate whether they strongly deter violations and encourage prompt and cooperative post-violation response and mitigation. It is anticipated that this review could result in a contentious rulemaking and increased enforcement action requiring additional attorney services.

State Trust Lands Unit

Rangeview Metropolitan District and Pure Cycle Corporation filed suit against the State Board of Land Commissioners claiming the Board gave them with the exclusive right to provide water service to all water users on the former Lowry Bombing Range. The plaintiffs base their case on contract theories of promissory estoppel and reformation of a water lease between the Board and Rangeview and claim \$128 million in damages. Trial is scheduled for three weeks in July 2014. The case management order provides for the possibility of over 50 depositions so there will be a substantial amount of legal work by the Unit and outside counsel over the next two years.

State Trust Lands Unit

The U.S. Fish and Wildlife Service and its partners, including the State of Colorado and local municipalities, recently closed on a land exchange that will add approximately 1,200 acres of important wildlife habitat to the Rocky Flats National Wildlife Refuge, increasing the refuge's total size by nearly one-third. Section attorneys worked on the cleanup of Rocky Flats and its designation as a wildlife refuge, as well as the land exchange which included some Land Board property. Although several municipalities and environmental groups challenged the land exchange in federal district court, the court found the transaction lawful and dismissed the case. The matter was appealed by the challengers and is now before the Tenth Circuit Court of Appeals. Attorneys will continue to expend resources defending this land exchange.

IV) WORKLOAD MEASURES

Water Quality & Radiation Unit

The attorneys in the Unit provide general legal advice as well as representation in regulatory, administrative, and judicial proceedings, enforcement actions, and legislative proposals. This includes representing clients in meetings, rulemaking hearings, and adjudicatory proceedings before the Water Quality Control Division, Water Quality Control Commission, the Water and Wastewater Facility Operators Certification Board, the Radiation Management Program, the Board of Health, and various state and federal courts. As just one example, the attorneys prepare for and attend approximately 15 – 20 meetings of various boards and commissions annually.

The attorneys assist the water quality division and radiation program in obtaining and maintaining delegation from the EPA and the U.S. Nuclear Regulatory Commission to administer the state counterparts of corresponding federal environmental and radiation programs. They ensure that adoption, implementation and enforcement of the state's environmental programs are consistent with state and federal requirements, and defend any challenges to such programs. The attorneys are regularly involved in issues of statewide importance, including such matters as clean streams, rivers and lakes, safe drinking water, the regulation of medical and industrial uses of radioactive materials, clean-up of historic uranium mills, and licensing of new uranium mills. The Unit's attorneys have a regular caseload of enforcement actions. The attorneys seek to ensure compliance with environmental programs through creative, non-punitive means, as well as through traditional enforcement methods. In addition to traditional cash penalties, the attorneys help to negotiate supplemental environmental projects, which can be used to reduce cash penalties and improve the environment, and environmental covenants to ensure protection of the public health and safety. In the regulatory arena, the attorneys help to draft and to negotiate clear, effective and efficient regulations and legislation on behalf of their clients. They review proposed legislation to ensure that it is consistent with existing laws and regulations.

In recent years the CDPHE has experienced an increase in workload related to many of the state's environmental programs, including water quality and radiation control. Such workload increases have included and will include large-scale rulemakings such as nutrient pollution control. They also include new temperature, organic chemicals, and arsenic standards, other permitting regulations, and water pollution issues from oil and gas operations. There has also been an increase in litigation concerning challenges to CDPHE decisions, such as with respect to water permits, radioactive materials licenses, Open Records Act issues, agency commission determinations, construction stormwater enforcement, water treatment plant site approvals, and drinking water disinfection revocations. This trend has required the Unit to spend additional time assisting the client to develop and defend its decision-making record. A recent increase in major federal environmental legislation, litigation, and policy initiatives will require additional legal resources as the client makes changes to its corresponding state program.

Air Quality Unit

The attorneys in the Air Quality Unit provide general legal advice as well as representation in regulatory, administrative and judicial proceedings, enforcement actions, and legislative proposals. This includes representing clients in meetings, rulemaking hearings, and adjudicatory hearings before the Air Pollution Control Division, Air Quality Control Commission, the Public Utilities Commission, the Board of Health, and various state and federal courts. As just one example, the attorneys prepare for and attend approximately fifteen meetings of various boards and commissions annually.

Unit attorneys assist the Air Pollution Control Division and Air Quality Control Commission in obtaining and maintaining delegation from the EPA to administer the state counterpart of corresponding federal environmental program. They ensure that adoption, implementation and enforcement of the state's environmental programs are consistent with state and federal requirements, and defend any challenges to such programs. The attorneys are regularly involved in prominent issues of statewide importance, including such matters as compliance with national standards for ground level ozone and regional haze, greenhouse gas regulation, and the management of pollution emissions associated with wildfires and controlled, open burning. A Unit attorney also serve as counsel for the Colorado Energy Office, serving as general counsel for the office, which includes representing the office when it intervenes in cases before the Public Utilities Commission.

The Unit's attorneys have a regular caseload of enforcement actions. The attorneys seek to ensure compliance with environmental programs through creative, non-punitive means, as well as through traditional enforcement methods. In addition to traditional cash penalties, the attorneys help to negotiate supplemental environmental projects, which can be used to reduce cash penalties and improve the environment. In the regulatory arena, the attorneys help to draft and to negotiate clear, effective and efficient regulations and legislation on behalf of their clients. They review proposed legislation to ensure that it is consistent with existing laws and regulations.

The Air Pollution Control Division continues to experience significantly more work associated with rulemaking, permitting and enforcement due to an increase in oil and gas

exploration and production as well as an increasingly educated regulated industry, requiring additional support from the Unit's attorneys. As the Division manages this workload, there is more demand on Air Quality attorneys to address a myriad of issues. The Division continues to undertake significant rulemaking revisions for its oil and gas air emission controls program and anticipates more revisions to address the new and tighter federal standards for ozone, nitrogen oxides and sulfur dioxides. These complicated and contentious program changes also strain the resources of the Air Quality Control Commission. Air Quality Unit attorneys will continue to see an increased demand for legal support on these program changes. In recent years, the Division and Commission have been involved in litigation over decisions approving the Regional Haze State Implementation Plan, permits, and Open Records Act issues. This trend has required the Unit attorneys to spend additional time advising the agencies and defending their decisions.

Hazardous & Solid Waste Unit

This Unit represents the HMWMD in a wide variety of civil matters. The Unit's attorneys promptly review draft administrative orders to ensure that they are within the client's authority to issue and enforce. Additionally, the Unit represents the related rule-making body, the Solid & Hazardous Waste Commission, and ensures it complies with applicable statutory and regulatory procedural requirements, and advises the Commission as needed. The Unit also handles civil and administrative litigation and assists the client in formulating litigation strategy, amassing evidence, preparing witnesses, and appearing in administrative, trial and appellate courts. The attorneys help draft and negotiate clear, effective and efficient hazardous and solid waste regulations and legislation on behalf of their clients. Many Solid Waste Regulations are being completely revised and re-promulgated over the next several years. They review proposed legislation to ensure that it is consistent with existing laws and regulations.

Water Conservation Unit

The Unit assists the CWCB, Parks and Wildlife, State Land Board, Department of Transportation, Department of Corrections and Department of Education in acquiring, maintaining and protecting water rights. In order to meet expectations of the above goal, Unit personnel undertake the following: evaluate water rights portfolio and recommend and assist in implementing advisable actions; identify and resolve problems concerning existing water rights through stipulated settlements or litigation; pursue changes of water rights or applications for new water rights as directed by the client; protect clients water rights and access easements from 3rd parties; represent and assist client agencies in administrative proceedings and hearings and advise staff in preparing for such meetings; assist CWCB staff in developing and obtaining Controller approval of standard loan contract and revisions; assist CWCB staff in resolving issues related to loans and grants and in developing loan programs and procedures; provide comprehensive legislative history research for client agencies, and other complex legal research, including drafting legal memos and opinions; advise Parks and Wildlife staff regarding water and water rights acquisitions for new parks and wildlife areas; assess the quality and viability of

prospective acquisitions, negotiate specific terms of purchase and negotiate and draft transactional documents; and assess the quality and viability of prospective acquisitions, negotiate specific terms, negotiate and draft transactional documents, providing guidance through the due diligence process. For example, this year the Unit helped draft and finalize 18 loans, totaling over \$22 million.

Water Resources Unit

Attorneys in the Water Resources Unit represent the State Engineer and his seven Division Engineers in water matters before Colorado's seven water courts. These matters may include: (1) opposition to applications for new water rights, changes of water rights, plans for augmentation, required findings of reasonable diligence in the development of conditional water rights, or to make conditional water rights absolute through actual use; (2) water right abandonment proceedings initiated by the Division Engineers; (3) the enforcement of water right administrative orders issued by the Division Engineers; (4) complaints for declaratory or injunctive relief regarding water rights or their administration; (5) appeals of the State Engineer's rulemakings; and (6) other State Administrative Procedures Act appeals of agency actions related to well-permitting, nontributary ground water determinations, temporary substitute water supply plans, interruptible water supply agreements, and other determinations delegated to the State Engineer by the General Assembly. Presently, the Unit is handling over 700 water matters in varying stages of litigation.

Unit attorneys also represent and advise the Colorado Ground Water Commission and the State Engineer's staff in proceedings before the Commission at its quarterly meetings. The Ground Water Commission is a regulatory and adjudicatory body authorized by the General Assembly to manage and control ground water resources within eight Designated Ground Water Basins in eastern Colorado. These basins have very little surface water and users rely primarily on ground water as their source of supply. Matters before the Commission may include: (1) the determination of designated ground water basins; (2) the creation of ground water management districts; (3) the creation and adoption of rules and policies; (4) reviews of requests for variances from such rules and policies; and (5) appeals of determinations the Commission has delegated to the State Engineer. Such determinations by the State Engineer include: (1) the issuance of new conditional large capacity well permits; (2) the determination of rights to ground water in the Denver Basin aquifers within the designated basins; (3) the issuance of replacement well permits for large capacity wells; (4) the determination of water rights or changes of water rights for large capacity wells; and (5) the issuance of final permits for such wells. The State Engineer and his staff also provide technical and administrative support to the Ground Water Commission and the Ground Water Management Districts.

Unit attorneys also represent the Board of Examiners of Water Well Construction and Pump Installation Contractors, which has general supervision and authority over the construction and abandonment of wells and the installation of pumping equipment, with the ability to adopt and revise related rules. The Board of Examiners also has the authority to examine for, deny, approve, revoke, suspend, and renew the licenses of applicants and disseminate information to pump installation contractors and well

construction contractors in order to protect and preserve the ground water resources of the state. The Board handles complaints regarding licensed water well construction and pump installation contractors and those persons operating without a license. Unit attorneys assist the Board with hearings, the judicial enforcement of the Board's orders, and complaints against unlicensed contractors.

Resource Conservation Unit

Attorneys in the Resource Conservation Unit represent the Division of Reclamation, Mining and Safety (DRMS) in administrative hearings held monthly before the Mined Land Reclamation Board. Attorneys advise and assist the Division in preparing for administrative hearings and represent the Division at prehearing conferences and at the hearings. In addition, the Unit represents Division staff related to administrative enforcement actions. These administrative hearings can range from small hearings with a few people involved to time consuming hearings in which numerous parties (operator, objectors, attorneys, etc.) and complex issues (water quality, uranium contamination, legal right to enter) are involved. In addition, attorneys represent the Division in all litigation and related appeals. The attorneys also assist the Division in drafting proposed regulations for rulemaking hearings. Unit attorneys also provide day-to-day verbal and written advice and representation to the Division on a variety of legal issues and matters. The DRMS continues to see a substantial increase in its workload related gold, silver, molybdenum, and uranium prospecting and mining/development. Such mining and development will ultimately result in reclamation permit applications and/or amendments being filed with the Division and hearings being held on such applications before the Mined Land Reclamation Board. Accordingly, there will be a parallel increased need for legal services.

Unit attorneys also act as legal advisor to the Colorado Oil and Gas Conservation Commission (COGCC) at monthly administrative hearings. The Unit represents COGCC staff on administrative enforcement actions and handles all litigation for this client. They formulate litigation strategy, amass evidence, prepare witnesses, and appear in administrative, trial and appellate courts. The Commission's attorney also assists in drafting proposed regulations for rulemaking hearings. The Commission has several large rulemaking hearings a year with multiple parties and numerous alternate proposals. The attorneys provide day-to-day verbal and written advice and representation to the Commission and staff on a variety of legal issues and matters. The attorneys work with the COGCC and its staff to set priorities for legal services based on workload, need, and budget constraints. The average yearly number of matters for which legal services are provided runs in the hundreds. This workload will dramatically increase as the COGCC increases its enforcement efforts in response Executive Order 2013-004. The trend of issuing record breaking numbers of applications for permits to drill will most likely continue this year. In addition, the COGCC initiated litigation regarding the preemption of a local municipality's oil and gas regulations and is a party to a lawsuit challenging a voter-approved ban on the use of hydraulic fracturing. Both these matters will continue to require significant attorney resources for the next year. Based on the rules, the

litigation and the record breaking business of the COGCC, there is likely to be a continued increase in the Commission's need for legal services.

All client agencies represented by this Unit have seen an increase in litigation this past year, and that trend will likely continue. In much of the current litigation, appeals are becoming more common; therefore, the Unit is involved in a significant amount of appellate work.

Trust Lands Unit

The attorneys in the State Trust Lands Unit are assigned to State Board of Land Commissioners. The attorneys act as general counsel to and work directly with the Land Board to appropriately plan and meet the demand for legal services based on workload and budget constraints. The case load for the Board continues to increase and generally exceeds legal service budgets even though attorneys worked directly with the Board to establish priorities within those budgets. Due to the specialized nature of the agency, which is primarily a revenue generating entity and not primarily regulatory in nature, legal services are provided by attorneys on a daily and otherwise on-going basis and not generally on an individual request basis. In many instances such services are provided informally in person or through telephone consultations. Assigned attorneys attend, represent and assist the Land Board to establish policy and program direction, and assess real estate transactions during its monthly meetings. Attorneys then assist Board staff to implement those policies, programs, and transactions as well as advise on the general management of the revenue generating assets of the Board. The provision of legal services is given in a manner intended to avoid legal challenge to or litigation regarding the activities of the Board. Any litigation that is filed is handled by the attorney assigned to represent the Land Board in a timely and effective manner.

Parks and Wildlife Unit

The attorneys in the Parks and Wildlife Unit act as general counsel to and work directly with its client agency, the Colorado Parks and Wildlife Commission, to appropriately plan and meet the demand for legal services based on workload and budget constraints. The case load for the client agency continues to increase and generally exceeds the legal service budget. Attorneys work directly with staff from the client agency to establish priorities within the budget. Due to the specialized nature of their client agency, which is primarily a revenue generating entity and not primarily regulatory in nature, legal services are provided by attorneys on a daily and otherwise on-going basis and not generally on an individual request basis. In many instances such services are provided informally in person or through telephone consultations. Assigned attorneys attend, represent and assist the Parks and Wildlife Commission to establish policies and program direction during its monthly meetings and then assist the agency's staff to implement those policies and programs. Attorneys also assist with legal issues regarding the general management of the revenue generating assets of the client agency. The provision of legal services is given in a manner intended to avoid legal challenge to or litigation regarding the activities of the client agency. Any litigation filed is handled by the attorney assigned to represent the client agency in a timely and effective manner.

I) BACKGROUND INFORMATION: OFFICE OF CONSUMER COUNSEL SECTION.

This Unit provides full legal services to the Office of Consumer Counsel (“OCC”), a type 1 agency within the Colorado Department of Regulatory Agencies, and the Utility Consumers’ Board. By statute, the OCC is charged with representing the public interest and specific interests of residential, small business, and agricultural consumers in proceedings before the Colorado Public Utilities Commission (“Commission”). Such advocacy most often involves matters relating to proposed changes in electric, gas, and telephone utility rates and services. In addition, the Unit represents the OCC in federal regulatory proceedings affecting Colorado consumers’ rates and services. See Legal Services to State Agencies for Program Summary.

II) PRIOR YEARS LEGISLATION

The Colorado Legislature in 2010 passed the following legislation affecting energy regulation in Colorado:

HB10-1001, Concerning the Installation of New Distributed Renewable Energy Generation Facilities in Colorado and Increasing the Target Percentages under the Electric Utility Portfolio Standard;

HB10-1365, Concerning Incentives for Electric Utilities to Reduce Air Emissions, and Requiring Plans to Achieve Such Reductions that Give Primary Consideration to Replacing or Repowering Coal Generation with Natural Gas and Also Considering Other Low-Emitting Resources.

III) HOT ISSUES (for the OCC)

Governor Ritter’s issuance in November 2007 of his Colorado Climate Action Plan and the Legislature’s passage of HB10-1365, known as the “Clean Air-Clean Jobs Act” (“CACJA”), has greatly affected energy regulation in Colorado. As a result of the Governor’s Climate Action Plan, the CACJA, and the Commission’s rulemaking dockets to implement this legislation, the OCC has been heavily involved in numerous proceedings before the Commission involving energy issues.

The Commission requires jurisdictional electric utilities, Public Service Company of Colorado (“Public Service”) and Black Hills/Electric (“Black Hills”) to file every four years their electric resource plan (“ERP”) to determine cost-effective resource portfolios to meet their electric resource needs. Public Service filed their latest ERP in October 2011 and Black Hills filed their latest ERP in July 2012. These ERP filings were affected by the PUC’s decisions in other dockets, which included the CACJA, Demand Side Management, Renewable Energy Resources, Interruptible Service Option Plan and various transmission plan applications. HB07-1037 required

the Commission to develop rules for natural gas and electric demand side management programs to develop natural gas and electric savings targets. Electric resource needs will be reduced by the implementation of these conservation measures. HB07-1281 revised the electric resource standards by requiring electricity to be generated, for utilities under the Commission's jurisdiction, from eligible energy resources in the following amounts: 3% for the year 2007, 5% for the years 2008 through 2010, 10% for the years 2011 through 2014, 15% for the years 2015 through 2019 and 20% for the year 2020 and thereafter. (Municipal utilities and cooperative electric associations have smaller requirements.) The maximum retail rate impact to comply with these standards is 2% of the total electric bill annually for each customer. HB06-1281 (codified at 40-2-123) provides incentives for utilities to consider the use of "new clean energy and energy-efficient technologies" for its electric generation portfolio. For generation that qualifies as a 123 Resource, the utility is allowed to collect approved costs through a separate rate rider. SB09-051 encourages the installation of energy-efficient equipment such as solar panels. HB10-1001 further revised the electric resource standards by requiring electricity from eligible energy resources to 12% for the years 2011 through 2014, 20% for the years 2015 through 2019 and 30% for the year 2020 and thereafter. The 2011 and 2012 ERP proceedings involved all of the above referenced legislation.

The CACJA required Public Service and Black Hills to file at the Commission before August 15, 2010 its Emission Reduction Plan, which covered a minimum of 900 megawatts or 50% of the utility's coal-fired electric generating units in Colorado, whichever was smaller. Each of the utility's plans had to be reviewed by the Department of Public Health and Environment prior to filing to determine if the plan or plans "meet the current and reasonably foreseeable requirements of the Federal Act ("Federal Clean Air Act") and State law ("Colorado Air Pollution Prevention and Control Act") in a cost-effective manner." Filings were made by Public Service and Black Hills. Pursuant to HB10-1365 the Commission issued its Decision in both proceedings on December 15, 2010. The CACJA requires full implementation of the approved Emission Reduction Plans on or before December 31, 2017. As indicated above, the CACJA affects the ERP filings made by Public Service and Black Hills. In addition to affecting the ERP filings, the implementation of the CACJA will affect the electric rates paid by the customers of the two utilities. The OCC has represented its statutorily required customers in the electric rate cases that were filed by Public Service and Black Hills and will continue to represent customers in future rate cases.

The OCC also represents its statutorily required customers in natural gas rate cases that were filed by five investor owned natural gas companies. As a result of new federal legislation, investor owned natural gas companies have to implement updated natural gas safety procedures. As a result, the natural gas companies have proposed adjustments to allow recovery of these costs outside of a normal rate case.

IV) WORKLOAD MEASURE (for the OCC)

Workload Measure	Unit	FY 12 Actual	FY 13 Actual	FY 14 Estimate	FY 15 Request
Achieve customer savings that at least equal the OCC's annual appropriation		3074% \$45,432,244	3284% \$50,202,608	3179% \$47,800,000 (Based on a 2 year fiscal average)	3179% \$47,800,000 (Based on a 2 year fiscal average)
Percent of rate proceedings in which the OCC participated on behalf of consumers		100%	100%	100%	100%

OCC

Performance Measure	Outcome	FY 12 Actual		FY 13 Actual		FY 14 Estimate		FY 15 Request	
		Incidents	Change	Incidents	Change	Incidents	Change	Incidents	Change
Number of cases OCC participates	Benchmark	60		60		60		60	
	Actual	74		80					

Strategy: The Office of Consumer Counsel ("OCC") unit represents the Office of Consumer Counsel and therefore represents residential, small commercial and agricultural customers before the Public Utilities Commission.

Evaluation of Prior Year Performance: Because the cases the OCC unit participates is based on the filings done by electric, natural gas and telephone utilities, the OCC has no control on the number of cases worked on. However, by reviewing the savings chart above, the OCC has saved utility customers millions of dollars.

Key Workload Indicators: The key workload factor is the amount of customer savings. The number can fluctuate each year because it depends on the number and type of cases filed by utilities. For example, there are potentially more savings in years that a utility or multiple utilities file rate cases.

Performance Evaluation: The OCC has saved utility customers millions of dollars each year since the OCC was created by the Legislature in 1984. The savings chart above shows the customer savings for the past two fiscal years. The OCC can maintain this success by diligently advocating for utility customers in proceedings before the Commission.

Revenue and Utilities Section (“R&U”)

Department of Law FY 2014-15

MISSION: R&U’s mission is to provide responsive and proactive legal representation of the highest quality to its clients.

The Department of Law created this new Section in FY 13-14 based on a decision item approved by the legislature to provide an additional Deputy Attorney General to the Legal Services to State Agencies line item. R&U was split off from the Business & Licensing Section so that an appropriate span of control could be maintained for both sections.

I. BACKGROUND INFORMATION: REVENUE & UTILITIES SECTION

R&U consists of three Units: 1) Revenue, 3) Conservation Easement Tax Credit, and 3) Public Utilities Commission (“PUC”) Litigation. These Units represent the following clients:

- Department of Revenue
- Department of Local Affairs (Property Tax Administrator and Property Tax Division)
- Department of Regulatory Agencies (PUC Litigation Staff)

A. Department of Revenue

The Revenue Unit represents several clients within the Department of Revenue (“Revenue”).

Taxation (Office of the Tax Conferee, Collections, Taxpayer Services, Discovery, Tax Policy Analysis, Audit and Compliance). The Revenue Unit attorneys represent the Tax Conferee in administrative, district court and appellate proceedings in which all types of tax assessments are contested; defend the Revenue against multiple tax protester lawsuits in several different courts; provide legal advice defending the State’s interest in consumer bankruptcy cases; support and assist Revenue in rulemaking and legislative matters; and represent the Revenue in actions related to tax collection efforts. The Department’s taxation division requires intensive legal services to assure that taxpayers comply with the law and pay the amount owed under the law, thereby protecting the interests of all taxpayers. Tax cases are complex and often involve disputed amounts in the millions of dollars. Taxpayers are statutorily entitled to receive two trials: one at the administrative level, and a *de novo* trial in district court. Many also are appealed to Colorado’s appellate courts. R&U attorneys also provide legal advice and representation to Revenue regarding collections. Often, when delinquent taxpayers declare bankruptcy, Revenue’s interest must be protected in bankruptcy court.

Enforcement (Division of Gaming and the Colorado Limited Gaming Control Commission, Auto Industry Division and the Colorado Motor Vehicle Dealer Board, Division of Racing and the Racing Commission, Marijuana Enforcement Division, and Liquor and Tobacco Enforcement Division). Attorneys provide general counsel advice on matters including rulemaking, interpretations, policies, legislative matters and other questions presented. Attorneys represent the clients in administrative hearings, during the exceptions process and on appeal. Finally, attorneys defend clients in injunctive, declaratory judgment and other civil actions in district court.

Colorado Lottery: (Lottery Division and Lottery Commission.) Attorneys provide general counsel advice, assistance with rulemaking, and other legal assistance as requested.

Division of Motor Vehicles: Attorneys review rules and records requests, represent the Division in appeals of driver's license revocation cases to the Colorado Court of Appeals and Supreme Court, and provide other legal assistance as requested.

Executive Director's Office: Attorneys provide legal representation to Revenue's Executive Director, including defending the Executive Director in a variety of lawsuits related to any of Revenue's Divisions.

B. Department of Revenue—Conservation Easement (“CE”) Tax Credit

The CE Tax Credit Unit provides general counsel advice and legal representation to various Divisions and Programs at Revenue with respect to CE income tax credits. The CE Tax Credit Unit was created following legislation to address a backlog of credit disallowance cases. Among other things, House Bill 11-1300 created a process by which taxpayers may elect to waive their administrative hearing on the disallowance of the CE tax credits and proceed with an appeal and de novo trial to a district court presided over by a specially appointed judge.

C. Department of Local Affairs

The Revenue Unit also represents the Division of Property Tax and the Property Tax Administrator within the Department of Local Affairs.

Property Tax Administrator and Division of Property Tax. Attorneys prosecute cases related to state-assessed value before the Board of Assessment Appeals (BAA), the district courts, and appellate courts. The Division coordinates and administers the implementation of property tax law throughout 64 counties in Colorado, and is responsible for the valuation of the operating plant and property of all public utilities doing business in Colorado. These include telephone companies, airlines and railroads, among others. Attorneys representing the Division provide statutory interpretation and other general counsel services as needed.

C. Department of Regulatory Agencies

The PUC Litigation Unit represents the staff of the Colorado Public Utilities Commission (“PUC” or “Commission”).

Public Utilities Commission Litigation Staff. The PUC regulates the rates, charges, services, and facilities of public utilities within the State. The PUC Litigation Unit represents Litigation Staff of the PUC in cases before the Commission.

Staff of the Commission consists of experts in fields including, but not limited to engineering, finance, and economics. When Staff enters an appearance and becomes a party to a proceeding, Staff is divided into Advisory Staff and Litigation Staff. Representation of Litigation Staff includes providing legal advice on a daily basis and representing them in cases before the PUC. Such cases include but are not limited to those in which public utilities seek to increase the rates charged to the public, including residential, commercial, and industrial customers as well as in cases in which public utilities seek to either build new facilities or extend existing Colorado facilities.

The Unit attorneys represent the PUC and its Commissioners in judicial review actions; in civil actions commenced by or against the PUC in state and federal courts (except civil actions for damages against the PUC and/or PUC Commissioners, which are litigated by attorneys in the Tort Litigation Unit); and in federal administrative proceedings before the Federal Communications Commission, Federal Energy Regulatory Commission, and the Surface Transportation Board.

II. HOT ISSUES

A. Department of Revenue

Significant cases handled by the Revenue Unit on behalf of the Department of Revenue include:

TAXATION

Direct Mktg Ass’n v. Brohl. R&U attorneys argued before the Tenth Circuit seeking reversal of the district court’s permanent injunction enjoining the enforcement of use tax notice and reporting requirements for non-collecting retailers. The dispute in this case is over what methods the State may employ to enforce and collect the undisputedly constitutional use tax on sales made via the Internet and other remote means. District Court Judge Robert E. Blackburn found that the notice and reporting requirements discriminate against and unduly burden interstate commerce in violation of the dormant Commerce Clause. The Department argues on appeal that the dormant Commerce Clause does not require that interstate commerce be treated *more favorably* than intrastate commerce and that the modest reporting requirements on retailers without a physical presence in the State do not approach the significant burdens upon local and national retailers with such a presence of collecting and remitting the use tax. The Department received amicus support from the Multistate Tax Commission, which was uniquely positioned to offer a national perspective on the explosion of E-commerce and the U.S.

Supreme Court's *Quill Corp. v. N.D.* decision prohibiting states from compelling out-of-state retailers to collect and remit use tax.

Creager Mercantile v. Dep't of Revenue. R&U attorneys prevailed in this case, in which the district court found that "blunts," or "blunt wraps," constitute a "tobacco product" as defined in C.R.S. §39-28.5-101(5) for the purposes of tobacco taxes proscribed in C.R.S. §39-28.5-102 and §39-28.5-102.5. The court ruled against the Department, however, on the issue of penalties and interest. Plaintiffs' tort claims against the Department and its criminal investigator were dismissed.

Daimler Chrysler v. Dep't of Revenue. R&U attorneys prevailed in district court in this dispute over whether Daimler Chrysler is entitled to a "bad debt" deduction of \$490,284.40 for loans it made through motor vehicle dealers to consumers that were not repaid. The case is now on appeal, and briefing is ongoing.

Pub. Serv. Co. v. Brohl. R&U attorneys are representing Revenue on an appeal pending in the Colorado Supreme Court. The issue is whether equipment, wire, and transformers purchased by PSCo to generate, transmit and distribute electricity qualify for the manufacturing machinery exemption under section 39-26-709, C.R.S. A decision is expected in late 2013 or early 2014.

Pioneer N.R. v. Dep't of Revenue. At issue in this case, currently pending in the Colorado Court of Appeals, is whether gas gathering pipe qualifies for the enterprise zone machinery exemption in section 39-30-106, C.R.S. A decision is expected in 2013.

BP America Prod. Co. v. Dep't of Revenue. At issue in this case, currently pending in the Colorado Court of Appeals, is whether a company may deduct "return on investment" as a "cost borne" from its severance tax return in Colorado. A decision is expected in 2013.

DIVISION OF MOTOR VEHICLES

Francen v. Dep't of Revenue & Hanson v. Dep't of Revenue. R&U attorneys are representing Revenue's Division of Motor Vehicles ("DMV") on appeal in these two cases. The DMV prevailed on review in the district court and before the court of appeals. The Colorado Supreme Court has certified two questions: (1) Whether a driver can rely on the exclusionary rule to raise the illegality of the initial police contact as a defense in a civil driver's license revocation proceeding; and (2) Regardless of whether the exclusionary rule applies in these proceedings, does the express consent statute allow the DMV to revoke a driver's license on the basis of a search that is a product of an illegal stop and arrest. Briefing is ongoing.

ENFORCEMENT

Bd. of County Comm'rs of Gilpin County, et al. v. Ltd. Gaming Comm'n et al. R&U attorneys for the Gaming Commission prevailed in the Colorado Court of Appeals

in this case brought by Gilpin County challenging the Gaming Commission's rule codifying its historical interpretation of how certain Limited Gaming funds are distributed to Teller County, Gilpin County, and the three gaming towns.

Neugebauer, et al. v. Racing Comm'n. R&U attorneys for the Racing Commission prevailed in the Colorado Court of Appeals in a case that affirmed the Commission's orders and authority to take action based upon the presence of unauthorized medication in a race horse.

Marijuana Enforcement Division. R&U attorneys advised the Marijuana Enforcement Division as it continues to regulate medical marijuana throughout the state and as it prepares to implement an unprecedented state regulatory scheme to regulate sales of retail marijuana following the passage of Amendment 64. Attorneys assisted with review of legislation, stakeholder meetings, development of regulations and a variety of other unique legal issues.

B. Department of Revenue - CE Tax Credit

As of the end of FY 13-14, over 120 consolidated elections by taxpayers under House Bill 11-1300 ("HB 1300"), filed against Revenue were being actively litigated by the Unit's attorneys. The total amount of income tax liability at issue estimated for fiscal note purposes under HB 1300 was \$222.8 million, including \$154.9 million from CE income tax credit claims; \$18.6 million in penalties assessed on denied credit claims; and \$49.3 million in interest on those denied credit claims. HB 1300 strongly encourages Revenue to waive penalties and interest for taxpayers who have acted in good faith to resolve these disputes and Revenue has been waiving such penalties and interest in the vast majority of settlements. Such waivers will impact the amount ultimately collected by Revenue.

Significant matters handled by the CE Tax Credit Unit on behalf of the Department of Revenue include:

Thompson v. Brohl. In the first CE tax credit case to go to trial, Revenue prevailed in establishing that the taxpayers' claimed CE tax credit was invalid. The trial court agreed with the Department's position that the taxpayers failed to comply with the filing and recordkeeping requirements of the federal and state tax codes, thus rendering their six-figure CE tax credit invalid as a matter of law and upholding Revenue's initial determination. The case provided important guidance to Revenue and taxpayers evaluating the risks of litigation and prompted settlement discussions in other cases with Revenue.

Farm Deals, LLLP v. Dep't of Revenue. Revenue prevailed on summary judgment in a case involving approximately \$1.5 million of liability for tax, penalties and interest. Unit attorneys successfully argued that the taxpayers' multiple CE donations in the same year violated state laws that sought to curb the abusive practice of "fractionalizing" land to multiply the effect of the credit. Revenue also prevailed in arguing that the CE deeds'

extinguishment language violated the requirement that qualified conservation contributions be “protected in perpetuity.” IRC § 170(h)(5). The district court also agreed that the statute of limitations did not preclude Revenue’s disallowance of the CE tax credits.

Nichols v Colo. Dep’t of Revenue. In a case involving over \$6 million, the Court of Appeals denied a taxpayer’s petition for interlocutory review of a statute-of-limitations ruling in Revenue’s favor. The district court previously had ruled in Revenue’s favor that the statute of limitations for disallowing the claimed CE tax credit had not yet expired.

McSween et al. v. Brohl. Unit attorneys prevailed on summary judgment in a Teller County case where the judge concluded that four adjacent conservation easements were all invalid, because each allowed the donor and donee of the easement to agree, without court approval, to extinguish the easements. Judge Tallman further determined that a taxpayer who carried forward a portion of his tax credit could not simultaneously apply for a second credit.

Omnibus Sand and Gravel Settlement. Unit attorneys have represented Revenue in settlement negotiations with dozens of taxpayers wherein an agreement in principle to settle 19 different district court cases, involving 96 CE donations and approximately \$25 million of tax liability, as part of an omnibus settlement agreement. The cases involve similarly-situated taxpayers who donated CEs which gave up the ability to mine sand and gravel on properties in southeast Colorado using the same appraiser who prepared over 250 nearly identical appraisals. Revenue and the attorneys in the Unit carefully analyzed all of the pending district court cases involving gravel CEs to exclude from the omnibus framework cases presenting unique facts or significant invalidity defects, electing to take those cases to trial. The Department is finalizing documentation for these settlements and preparing for apportionment hearings. Transferees who have purchased CE tax credits involved in these cases will be given an opportunity either to settle with Revenue or the opportunity to be heard regarding Revenue’s agreement with their tax matters representatives at upcoming apportionment hearings that will be held in southeast Colorado.

Broyles, BCRR, Emick, and Ullom-Jones. The Department recently reached settlement agreements in principle for over \$20 million in three consolidated CE cases in Prowers County District Court and one consolidated case in Bent County. As a result of these agreements, the validity hearings set in these cases have been vacated. Transferees who have purchased CE tax credits involved in these cases will be given an opportunity either to settle with Revenue or the opportunity to be heard regarding Revenue’s agreement with their tax matters representatives at upcoming apportionment hearings that will be held in Prowers County, Colorado.

Senate Bill 2013-221. Unit attorneys worked represented Revenue in connection with SB13-221, which creates an application and review process for precertification of conservation easement donations and issuance of tax credit certificates. Unit attorneys and Revenue worked with stakeholders, the Division of Real Estate (DRE), the

Conservation Easement Oversight Commission (CEOC), and the State Auditor's Office on the drafting of SB 13-221 and on implementing the recommendations of the State Auditor in an audit report issued October 2012. The audit examined the process to review and determine the sufficiency of CE tax credit claims. SB 13-221 provides for a review and approval process by the DRE and the CEOC of the real estate and conservation aspects of the conservation easement transactions, including deeds, appraisals, and conservation purposes. The DRE certifies those elements of the conservation contribution as eligible for a tax credit under Colorado and federal law. After January 1, 2015, the Department will only review tax credit claims for narrow tax compliance issues.

C. Department of Local Affairs

Significant cases handled by the Revenue Unit on behalf of the Department of Local Affairs include:

Qwest Corp v. Dep't of Prop. Tax. The Division of Property Tax (DPT) prevailed in the Colorado Supreme Court, bringing to an end this litigation commenced in 2009. Qwest's case challenged differences between the way state assessed public utilities and other locally assessed property are valued for property tax purposes under the federal and state constitution. The Supreme Court rejected Qwest's equal protection claims, noting the wide latitude afforded to state laws in drawing economic classifications. The Supreme Court also rejected Qwest's claim under the state Gallagher Amendment (Uniformity Clause), which, it held, applies only to taxes assessed within the same territorial limits, and which, by definition, cannot require equity between state-assessed and locally-assessed companies.

Treehouse Condo. Ass'n v. Dep't of Prop. Tax. At issue in this case, currently pending before the Colorado Court of Appeals, is whether development rights held separately from surface rights constitute a taxable interest in real property, subject to assessment in Colorado. The Colorado Board of Assessment Appeals has found that these rights constitute a taxable interest.

D. Public Utilities Commission

Significant cases handled by the PUC Litigation Unit include:

ENERGY

Pub. Ser. Co. of Colo. Electric Rate Case. The PUC approved a settlement which resulted in a return to Public Service Company of Colorado's (PSCo) customers of over \$8 million. This settlement was the result of a prior electric rate case proceeding in April 2012 that resulted in approval of a multi-year rate plan for PSCo. Beginning July 2013, PSCo customers saw a credit on their utility bills, and the ongoing review process will result in more stringent and transparent reporting requirements for PSCo.

Pub. Ser. Co. of Colo. Gas Rate Case. In December 2012, PSCo filed an Advice Letter with the PUC that requires the PUC to decide significant policy issues. PSCo seeks approval of a set of three rate increases to natural gas base rates using forecasted information, which is commonly referred to as a future test year. The three requested increases are referred to as a multi-year rate plan. There has been considerable discussion, including significant testimony from Trial Staff and other parties, of whether it is in the public interest to use a future test year in lieu of historical test year information as a basis to set rates. This is the first time PSCo has sought approval of a multi-year plan. The hearing was completed May 31 and the parties are awaiting a decision.

Pub. Ser. Co. of Colo. CPCN Application to Construct Boilers. PSCo has filed an application to construct two new boilers to produce steam for its downtown Denver steam customers. Given the expense of the project, PSCo is concerned that steam customers will leave the system in favor of alternative sources of space heating, such as electricity and natural gas, which would require costs to be spread among a smaller number of customers, thereby increasing costs for the remaining steam customers. To avoid this, PSCo has proposed a regulatory plan that would require natural gas customers across Colorado to help pay for the upgrades to the steam system. An evidentiary hearing is scheduled for October 2013.

Public Service Electric Rate Case Expected in 2014. Pursuant to the Clean Air - Clean Jobs Act, the PUC approved a number of modifications, early retirements, and replacement of existing coal electric generation in Colorado. The work has been ongoing since 2011. The largest investment in new facilities by Xcel Energy is a large combined cycle unit at the Cherokee site, estimated at \$534 million. The project is scheduled to be completed by close of 2014. As a result, it is anticipated that Xcel Energy will request that cost recovery for the project be included in rates through a rate filing in 2014.

GAS PIPELINE SAFETY

Natural Gas Pipeline System Safety. Because of new legislation and federal rules under the National Pipeline Safety Act, four natural gas companies that have natural gas pipelines have new regulations in place that require additional safety inspections and replacement of natural gas pipelines under new conditions. These pipeline management and integrity programs require all utilities regulated by the PUC to replace, repair, inspect and replace pipe under an accelerated schedule within certain mandated timeframes. These costs which may be substantial are being passed on to ratepayers in rates in the form of a special rate called a Safety and Security Integrity Rider. Because these costs are substantial and may or may not be outside the normal course of business for a utility, Trial Staff has urged utilities to make these requests for special rate treatment along with their requests for regular rate increases, so that a determination can be made by the PUC on the appropriate method of recovery and amounts necessary to be recovered in a way that does not unduly impact rates paid by utility customers. This has led to at least eight filings for rate case and rate rider requests by utilities in this fiscal year and is a foreseeable event for the next several years as more and more federal regulations come

into effect requiring additional spending by utilities and corresponding additional requests for cost recovery.

TELECOMMUNICATIONS

Docket to Examine Whether Certain Areas of Colorado Are Receiving Effectively Competitive Basic Telephone Service. Earlier this year, the PUC promulgated new rules establishing a framework and process for determining the geographic areas of Colorado where there is effective competition for basic telephone services. Telephone carriers serving consumers in areas deemed effectively competitive stand to lose funding under the Colorado High Cost Support Mechanism (HCSM), which is a statutorily-established subsidy designed to help ensure that rural areas of Colorado receive basic telephone services. The expansion and modernization of telephone services, along with a growing population, have caused the PUC to reexamine the HCSM funding. Accordingly, in May of this year, the PUC established a docket applying its newly-promulgated rules to begin the process of deciding which portions of Colorado it should deem effectively competitive. It is anticipated that by the end of 2013, the Administrative Law Judge will deem the more obvious portions of Colorado as effectively competitive, and order a more detailed examination of the less obvious portions. The proceedings will continue until all wire centers within the state have been examined.

TRANSPORTATION

Contempt Proceeding Leads to Jail Time for Children's Activity Bus Operator for Violation of Permanent Injunction. Unit attorneys prevailed in a contempt proceeding against Larry Holle for violation of a permanent injunction. Mr. Holle operated as a charter bus/children's activity bus for many years. He transported primarily school age and high school age children, to and from afterschool or extracurricular events in old school buses that he purchased through the years. In 2005, the PUC sought and obtained a permanent injunction enjoining Holle from operating without being in compliance with certain statutory requirements and PUC safety rules. After a hearing, the court sentenced Mr. Holle to the maximum six months in the Denver County Jail and immediately remanded him into the custody of Sheriff's deputies.

I) BACKGROUND INFORMATION: STATE SERVICES SECTION.

Collectively, the attorneys in the State Services section provide representation to eight of sixteen executive branch state agencies, as well as Colorado's five statewide elected public officials, the Governor, Lt. Governor, Attorney General, Secretary of State and Treasurer. The Section also represents the Judiciary and the Public Utilities Commission. The legal work of the Section is diverse, ranging from providing advice on transactions and general operations to defending the constitutionality of state laws in both state and federal court. In general, the State Services Section protects children, people at risk, and represents the public at large. The Section also conserves the state's fiscal system by reviewing hundreds of state contracts and defending the State against claims typically involving the inadequacy of funding of various programs.

The primary metric is the volume of cases handled by each unit. For some units, additional workload measures are provided. We caution, however, that a single case, such as the Lobato School Finance trial and appeal may involve thousands of hours of legal work and other cases can be disposed of with minimal time.

The Section is composed of the following units:

Human Services:

This Unit represents the Department of Human Services both defending the Department in civil litigation and prosecuting on its behalf in the administrative courts. The Unit defends the county confirmation that a person is responsible for child abuse or neglect in administrative appeals. The unit prosecutes licensure actions to revoke or discipline child care providers who harm children or do not follow requirements. Attorneys represent the Division of Youth Corrections requesting early parole or community placement for aggravated offenders or extensions of commitment for youth who are a risk to the community. The unit files motions to quash record subpoenas and assists with open records requests. The Unit regularly provides general legal counsel to various Divisions within the Department, including: Behavioral Health, the Mental Health Institutes, the Developmental Disabilities, Colorado Works, Food Assistance, Child Support Enforcement and Vocational Rehabilitation. The Unit assists with transactional issues, including contract review and drafting, tax disputes, and more. Lastly, the Unit represents the State Long Term Care Ombudsman and the Child Welfare Ombudsman.

Health Care:

This Unit represents the health programs of the Department of Public Health and Environment, including the division that licenses and surveys all health facilities in the state, sets standards and level of care for hospital emergency departments and trauma units, and certifies EMTs and paramedics. The Unit also represents the Prevention Services Division, Disease Control and Environmental Epidemiology Division, and the Registrar of

Vital Statistics within CDPHE, which includes the Medical Marijuana Registry, birth/death records, and the State Laboratory. The Unit represents the Department of Health Care Policy and Financing, which administers Medicaid, the Colorado Indigent Care Program and the Children's Basic Health Plan. The Unit's representation includes eligibility issues, Medicaid provider appeals, recipient appeals, judicial review actions, collection of overpayments and amounts owed Medicaid by providers and liable third-parties. In addition, the Unit reviews rules for and provides counsel to the Colorado Board of Health and the Colorado Medical Services Board.

Labor/Personnel and Administration:

This Unit represents the Department of Labor and Employment, which involves mainly workers compensation, unemployment compensation, and petroleum storage tank monitoring and cleanup. In addition, the Unit does the legal work for the Department of Personnel and Administration, including the Personnel Director, employee benefit programs, state buildings, and purchasing. The Unit also advises the Colorado State Controller and reviews hundreds of contracts annually for legal sufficiency.

Education:

This Unit advises all of state's public colleges and universities, and the community college system, on a wide range of state and federal compliance issues, board governance, and transactional matters. In addition, the Unit represents the State Board of Education and the Department of Education on a wide variety of issues, including charter school appeals, general policy questions, and in the prosecution of teacher licensure cases. The Unit provides general legal advice to the Colorado State Charter School Institute, the BEST (Building Excellent Schools Today) Board, and the Department of Higher Education, including the Division of Private Occupational Schools, the Colorado Historical Society, and the Commission on Higher Education. The Unit regularly defends state education laws and the system of public school finance against constitutional challenges.

Public Officials:

This Unit provides legal advice to the Governor, Lt. Governor, Secretary of State (election and campaign finance law), the Treasurer, the Attorney General, and the Judicial Department, as well as the Department of Local Affairs, the Department of Military Affairs, the Office of Economic Development and International Trade, the Office of Information Technology, the State Auditor, the License Plate Auction Group, and the Title Board. The Unit handles constitutional challenges to some state laws and initiated measures adopted by the voters.

Public Utilities Commission (PUC):

This Unit represents the three commissioners of the PUC and its staff in an advisory (general counsel) capacity. The PUC Unit provides legal advice and writes orders in a wide variety of quasi-judicial and quasi-legislative proceedings, including rulemaking proceedings, conducted before the Commission. These proceedings address energy, telecommunications, and transportation regulation for the state. The PUC Unit also advises and represents the PUC on legislative matters and in state and federal court.

II) PRIOR YEAR LEGISLATION

Human Services

SB 13 012 - Concerning Reporting of Suspected Child Abuse and Neglect By Youth Sports Organizations. The bill adds directors, coaches, assistant coaches, and athletic program personnel employed by private sports programs or organizations to the list of persons required to report suspected child abuse or neglect to the county department of social services or local law enforcement agency.

SB 13 266 - Concerning a Request for Proposals Process to Create a Coordinated Behavioral Health Crisis Response System for Communities Throughout the State. The bill directs the Department of Human Services to issue a request for proposals to create a statewide coordinated and seamless behavioral health crisis response system to include a 24-hour crisis telephone hotline, walk-in crisis services, crisis stabilization units, mobile crisis services, residential and respite crisis services, and a public information campaign.

HB 13 1117 - Concerning Alignment of Child Development Programs. This bill specifies that the Department of Human Services is responsible for early childhood programs. The Early Childhood Leadership Council is moved from the Governor's Office to the Department. The nurse home visitation program, Tony Grampas youth services program, the Colorado student dropout prevention and intervention program, the Colorado before-and-after school project, the family resource center program, and the Colorado Children's Trust Fund and its board is moved from the department of public health and environment to the department of human services.

HB 13 1314 - Concerning the Transfer of the Administration of Long-Term Services for Persons with Intellectual and Developmental Disabilities to the Department of Health Care Policy and Financing. This bill creates the Office of Community Living in the Department of Health Care Policy and Financing (HCPF) and transfers the powers, duties, and functions from the Department of Human Services to HCPF by March 1, 2014. Employees and property will also transfer.

Education

SB 13-031 - CONCERNING PAYMENT OF TUITION FOR STUDENTS WHO PARTICIPATE IN DROPOUT RECOVERY PROGRAMS. The bill clarifies that a local education provider that operates a dropout recovery program must pay the student share of the tuition for each postsecondary course in which a student enrolls while participating in the program, not just for those courses that the student completes.

SB 13-033 - CONCERNING IN-STATE CLASSIFICATION AT INSTITUTIONS OF HIGHER EDUCATION FOR STUDENTS WHO COMPLETE HIGH SCHOOL IN COLORADO. The bill requires an institution of higher education (institution) in

Colorado to classify a student as an in-state student for tuition purposes if the student attends a public or private high school in Colorado for at least 3 years immediately preceding graduation or completion of a general equivalency diploma (GED) in Colorado; and is admitted to a Colorado institution or attends an institution under a reciprocity agreement. These students shall not be counted as resident students for any other purpose, but are eligible for the college opportunity fund stipend pursuant to the provisions of that program, and may be eligible for institutional or other financial aid. The bill exempts persons receiving educational services or benefits from institutions of higher education from providing any required documentation of lawful presence in the United States.

SB 13-053 - CONCERNING ESTABLISHING A PROCEDURE BETWEEN THE DEPARTMENT OF EDUCATION AND THE DEPARTMENT OF HIGHER EDUCATION THAT ALLOWS FOR THE TRANSFER OF AVAILABLE STUDENT DATA RELEVANT TO THE TRANSITION FROM HIGH SCHOOL TO THE POSTSECONDARY SYSTEM. The bill establishes a procedure between the department of education and the department of higher education that allows for the transfer of available student data relevant to the transition from high school to the postsecondary system.

SB 13-178 - CONCERNING AUTHORIZING RED ROCKS COMMUNITY COLLEGE TO OFFER A PHYSICIAN ASSISTANT STUDIES PROGRAM AS A PROGRAM OF GRADUATE EDUCATION. The bill authorizes Red Rocks community college to continue providing its physician assistant studies program by authorizing Red Rocks community college to confer a graduate degree on students who complete the physician assistant studies program.

SB 13-193 - CONCERNING INCREASING PARENT ENGAGEMENT IN PUBLIC SCHOOLS. In addition to their duties under existing law, the bill requires the school accountability committees to hold public meetings to solicit input concerning the contents of school priority improvement plans and school turnaround plans before the plans are written. The existing state advisory council for parent involvement in education (council), will identify key indicators of parent engagement in elementary, secondary, and postsecondary schools, and use the indicators to create metrics to measure and monitor the level of parent engagement and the progress made in increasing parent engagement. The council will annually report its findings concerning parent engagement to the state board of education, the Colorado commission on higher education, and the education committees of the general assembly.

SB 13-213 – CONCERNING THE FINANCING OF PUBLIC SCHOOLS. The bill creates a new school finance act, implementation of which is conditioned upon passage of a statewide ballot measure to increase state revenues for funding public education.

HB 13-1006 - CONCERNING REQUIRING CERTAIN SCHOOLS TO OFFER BREAKFAST TO ALL STUDENTS FOLLOWING THE FIRST BELL. The bill creates the “Breakfast After the Bell Nutrition Program,” which requires every school with

70% or more students eligible for free or reduced-cost lunch to offer a free breakfast to each student in the school.

HB 13-1081 - CONCERNING HUMAN SEXUALITY EDUCATION. The bill moves and adds language to the content standards for the instruction of comprehensive human sexuality education. The bill creates the comprehensive human sexuality education grant program in the department of public health and environment, and places limitations on the department of education's administration of federal Title V State Abstinence Education Grant Program.

HB 13-1147 - CONCERNING VOTER REGISTRATION FACILITATED BY STATE INSTITUTIONS OF HIGHER EDUCATION. The bill requires a state institution of higher education (institution) that utilizes and electronic course registration process to provide its students the opportunity to be electronically directed to the official website of the Secretary of State to apply for voter registration, either during or immediately following the electronic course registration.

HB 13-1194 - CONCERNING IN-STATE STUDENT CLASSIFICATION FOR DEPENDANTS OF MEMBERS OF THE ARMED FORCES. Current law authorizes a dependent of a service member to receive in-state tuition at a Colorado public institution of higher education (Colorado college) if the service member was stationed in Colorado during the dependent's last year of high school and the dependent enrolled in a Colorado college within 12 months after graduating from a high school in Colorado. The bill extends in-state tuition to all dependents that enroll within 10 years after the member was stationed in Colorado.

HB 13-1171 - CONCERNING THE USE OF EPINEPHRINE AUTO-INJECTORS IN EMERGENCY SITUATIONS IN SCHOOL SETTINGS. The governing authority of public and nonpublic schools may adopt a policy to authorize the school nurse or other designated school personnel to administer an epinephrine auto-injector to any student that the school nurse or designated school personnel in good faith believes is experiencing anaphylaxis, in accordance with a standing protocol from a licensed physician, physician's assistant, or advance practice nurse with prescriptive authority, and regardless of whether the student has a prescription for an epinephrine auto-injector. The department of education shall develop and publish an annual report compiling, summarizing, and analyzing all incident reports submitted to the department.

HB 13-1220 - CONCERNING THE CONFIDENTIALITY OF AN INDIVIDUAL EDUCATOR'S PERFORMANCE DATA. Any information collected concerning an individual educator must remain confidential and may not be published in any way that would identify the individual educator. The department of education and state board of education may also collect data for bona fide research, so long as the data is collected per established protocol and is used in a manner that protects the identity of the educator. The bill clarifies that evaluation reports and information are available when reviewing certain appeals.

HB 13-1263 - CONCERNING THE REGULATION OF PRIVATE OCCUPATIONAL SCHOOLS BY THE PRIVATE OCCUPATIONAL SCHOOL BOARD. The bill makes nonprofit private occupational schools subject to authorization and regulation by the board. The bill repeals the board's authority to accredit a private occupational school, but the board will continue to authorize private occupational schools. Under current law, a person who has a complaint against a private occupational school must exhaust the complaint procedures at the school before filing a complaint with the board. The bill repeals this requirement and allows a person to file a complaint directly with the board.

HB 13-1297 - CONCERNING THE AUTHORITY OF CERTAIN INSTITUTIONS OF HIGHER EDUCATION TO INVEST MONEYS. The board of trustees of Colorado school of mines and the board of trustees of Fort Lewis College (boards) may vote to invest the assets of its institution outside of the state treasury fund if they establish an investment advisory committee and a written investment policy. Each board must report to the joint budget committee at each regular legislative session regarding investments made and the earnings or losses derived therefrom. Neither board shall request from the general assembly any general fund appropriations to replace any losses incurred due to investment activities.

HB 13-1320 - CONCERNING FINANCIAL SUPPORT FOR MERITORIOUS COLORADO STUDENTS AT STATE-SUPPORTED INSTITUTIONS OF HIGHER EDUCATION. Under current law, state-supported institutions of higher education (institution) must generally maintain a required ratio of resident student admissions to nonresident student admissions. The bill allows an institution to count a student who is admitted as a Colorado scholar as 2 in-state students for purposes of calculating this ratio.

Health Care

SB 13 13-222 - CONCERNING IMPROVING ACCESS TO CHILDHOOD IMMUNIZATIONS, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION. This bill allows CDPHE to create a system for purchasing vaccines and to assess the ability of HCPF to purchase vaccines for children enrolled in CHP.

SB 13-242 - CONCERNING DENTAL SERVICES FOR ADULTS IN THE MEDICAID PROGRAM, AND, IN CONNECTION THEREWITH, MAKING AND REDUCING AN APPROPRIATION. This bill creates an adult dental benefit for adults in the Medicaid program.

SB 13-200 - CONCERNING AN INCREASE IN THE INCOME ELIGIBILITY FOR CERTAIN OPTIONAL GROUPS IN THE MEDICAID PROGRAM TO ONE HUNDRED THIRTY-THREE PERCENT OF THE FEDERAL POVERTY LINE, AND, IN CONNECTION THEREWITH, MAKING AND REDUCING AN APPROPRIATION. This Medicaid expansion bill allows for funds in the hospital provider fee cash fund to be used to increase the income eligibility for certain populations.

HB 13-1068 - CONCERNING ON-SITE INSPECTIONS OF MEDICAID

PROVIDERS. This bill aligns state law with federal law and allows the Department to conduct unannounced inspections of providers for the purpose of an audit or review for compliance with state and federal law.

HB 13-1314 - CONCERNING THE TRANSFER OF THE ADMINISTRATION OF LONG-TERM SERVICES FOR PERSONS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES TO THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING. This bill transfers the division of developmental disabilities from DHS to HCPF.

Public Utilities Commission

SB 252 - Concerning renewable energy standards for rural cooperatives and transmission and generation utilities. This bill amends Section 40-2-124 and increases the required percentage of energy generation from renewable energy sources to 20% by 2020 for rural operators and transmission and generation utilities, namely Tri-State.

When signing this bill, the Governor also created an advisory committee among the electricity cooperatives, environmentalists, large agricultural customers, and government agencies, including the AG's Office, to develop recommendations for the Colorado Energy Office on how SB 252 may be amended in the upcoming legislative session.

SB 282 - Concerning a medical exemption from tiered electricity rates. This bill exempts consumers with medical conditions requiring electricity to power medical equipment with an exemption from the applicability of tiered electricity rates.

SB 194 - Concerning the repeal of the low income telephone assistance program (LITAP).

Several miscellaneous bills addressing reporting by the PUC to the legislature, promotion of forestry biomass, licensure of solar panel contractors, imposing penalties upon motor carriers, and revising obsolete provisions of the public utilities law.

Public Officials

SB 13-210 - CONCERNING EMPLOYMENT CONDITIONS FOR CORRECTIONAL OFFICERS, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION. The bill designates a portion of Fort Lyon for use as residential community by the Department of Local Affairs to provide supportive housing services to homeless individuals.

HB 13-1135 - CONCERNING THE ABILITY OF A PERSON TO PREREGISTER TO VOTE IF THE PERSON HAS REACHED SIXTEEN YEARS OF AGE BUT WILL NOT BE EIGHTEEN YEARS OF AGE BY THE DATE OF THE NEXT

ELECTION, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION. The bill allows any person who is sixteen years old, but who will not be eighteen years old by the date of the next election, to preregister to vote.

HB 13-1224 - CONCERNING PROHIBITING LARGE-CAPACITY AMMUNITION MAGAZINES. The bill prohibits large-capacity ammunition magazines.

HB 13-1229 - CONCERNING CRIMINAL BACKGROUND CHECKS PERFORMED PURSUANT TO THE TRANSFER OF A FIREARM, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION. The bill requires criminal background checks to be performed when transferring a firearm.

III) HOT ISSUES:

Human Services

- The Unit continues to defend Human Services in the CBMS litigation. We continue to monitor monthly case processing for compliance with the settlement agreement.
- The Unit is working with the Department on bankruptcy cases where there is a federal tax intercept.
- The Unit is defending the Department in judicial review actions in benefits cases where the county handled the administrative court action. At least two of these cases have been ongoing and involve individuals who are *pro se* and appear to be mentally ill.
- The Unit is assisting counties, GALs, and the State Department to sort out the impact of a Supreme Court decision on privileges held by children in dependency and neglect proceedings.

The Unit will be defending the Old Age Pension statute requiring applications for social security benefits in order to receive Old Age Pension.

Health Care

- The Unit continues to defend HCPF in the CBMS litigation. Presently, we are continuing to monitor case processing figures for compliance with the settlement agreement.
- The Unit continues to provide assistance to HCPF regarding implementation of the Affordable Care Act.

- The Unit is defending HCPF in numerous deferrals and disallowances from CMS.
- The Unit continues to defend HCPF in ongoing challenges to its automatic lien statute which allows the state to collect millions of dollars each year from liable third parties.
- The Unit is continuing joint efforts with the U.S. Attorney's office and the Medicaid Fraud Control Unit to pursue Medicaid provider fraud, in both the civil and criminal arenas.
- The Unit continues to defend HCPF in appeals filed by nursing facilities challenging reimbursement rates.
- The Unit continues to defend HCPF in a Americans with Disabilities Act action in federal district court challenging HCPF's reimbursement rate for non-emergency medical care.
- The Unit continues to provide legal advice and opinions to the Department of Public Health and Environment, Medical Marijuana Registry. We also continuously defend the Department against subpoenas seeking confidential information, and assist the Board of Health with rulemaking issues.
- The Unit continues to assist CDPHE with ongoing public health and disease control investigations.
- The Unit continues to defend the CDPHE's Laboratory Services Division against challenges to their blood-alcohol and breathalyzer testing and from subpoenas seeking confidential and protected information.

Labor/Personnel and Administration

- *CDLE WyCAN Project.* The U.S. Department of Labor ("USDOL") made federal grant funds available to the states for the purpose of facilitating the design, development, and implementation of unemployment insurance ("UI") benefit systems and tax systems by multiple states working cooperatively. It is the stated intent of the USDOL to make the systems developed with federal funds available for use by other states. The states of Wyoming, Colorado, Arizona, and North Dakota (collectively, "WyCAN States") jointly applied for and received the federal funds for this use. The total grant amount is \$58,100,000 ("Grant Funds") to the WyCAN States for this system (the "Project"). With contributions from each state for state specific work, the total project amount is \$110M.
- *CDLE, Division of UI v. FedEx.*, Docket Nos. 6299-2011, 7956-2011, 37816-2010. These three cases involve a reclassification of package delivery drivers from independent contractors to employees. Extensive discovery is proceeding and a hearing is scheduled for April of 2014.

- The Unit is working with the Office of Information Technology to streamline the State's contracting and administration process in connection with information technology.
- The Unit will continue to work with DPA and the Governor's Office and reform of the State procurement and State contracting policies and procedures.

Education

These matters have significant potential impact and have received coverage in the press.

- *Taxpayers for Public Education, et al., v. Douglas County School District RE-1, et al., and LaRue, et al., v. Colorado Board of Education, et al.* These cases were brought against the Douglas County School District, the State Board of Education, and the Colorado Department of Education as a constitutional and statutory challenge to the Douglas County Option Certificate Pilot Program, which will allow up to 500 Douglas County public school students to attend private schools of their choice either inside or outside the district. The District Court enjoined the Program and the County, the Board and CDE appealed. On February 28, 2013, the Court of Appeals issued a ruling in favor of Defendants, overturning the District Court's permanent injunction, and concluding that Plaintiffs lacked standing, and that the pilot program did not violate any of the Colorado constitutional provisions at issue. Plaintiffs filed petitions for writs of certiorari on April 11, 2013, and Defendants filed responses on April 19, 2013. The Supreme Court has not yet decided whether it will hear the case.
- *ASSET Bill.* Our office continues to work closely with the Department of Higher Education to implement the provision of SB 13-033. The Governor signed the ASSET Bill on April 19, 2013. DHE, in consultation with our office, has responded to a list of preliminary questions from tuition classification officers via a FAQ document circulated and posted on DHE's website on April 25, 2013. In addition, Our office is currently in the process of assisting DHE in updating the tuition classification guidelines and other policies. Institutions are struggling to determine their obligations under federal immigration law in light of the portion of SB 13-033 that eliminated the requirement that institutions of higher education verify lawful presence under C.R.S. 24-76.1-103.
- *Cost Recovery Efforts for Environmental Contamination on the campus of Colorado School of Mines.* Mining research projects conducted primarily by private mining interests and the Federal government at a research center on the Colorado School of Mines campus left research wastes containing radioactive materials and other metals at the Site. In the 1990s, the EPA conducted a partial clean up that proved ineffective. The General Assembly appropriated approximately \$7.5 million between April 1994 and February 1995 for additional Site cleanup. Cleanup efforts extended through 2012 with the total funds expended by Colorado School of Mines in cleaning up the site and pursuing

recovery exceeding Seventeen Million Dollars. The State has negotiated a Consent Decree with numerous Principal Responsible Parties (PRPs) and the Federal government to recover a large proportion of the State's unrecovered costs and the parties expect approval by the Federal District Court in fall of 2013, and payment by the settling PRPs thereafter.

- *Casey, et.al. v. Colorado Higher Education Insurance Benefits Alliance Trust, et.al.* Plaintiffs claim to be representative of a putative class of plaintiffs, employees of Mesa State College, who allege they were harmed by the refusal of the CHEIBA Trust and its member colleges to return somewhere near \$1 million in funds maintained as reserves in the CHEIBA Trust, alleged to be attributable to Mesa State College's contributions to the Trust while it was a member. The case was initially filed in Denver Probate Court. Defendants appealed the Probate Court's ruling on the applicability of the CGIA to plaintiffs' claims, and on August 16, 2012, the Colorado Court of Appeals ruled that some of plaintiffs' claims, including claims for breach of fiduciary duty, breach of the implied covenant of good faith and fair dealing, and inverse condemnation, did not and could not lie in tort and therefore were not barred by the CGIA. Defendants filed petitions for writ of certiorari and plaintiffs filed cross-petitions. The petitions and cross-petitions were fully briefed in July, 2013. The Supreme Court has not yet decided whether it will hear the case.

Public Officials

a. Pending Public Officials litigation—These lawsuits have potentially significant public impact and have been covered in the media:

- *Independence Institute v. Gessler.* The Independence Institute and other plaintiffs challenge several provisions in Colorado's initiative statute, including residency for circulators, limits on payments made on a per-signature basis, requirements that circulators be available to provide testimony in petition challenges, licensure of petition entities, and other provisions. The Secretary's summary judgment prevailed on eight out of ten claims, a ninth claim was settled, and the federal district court held an eight-day trial on the pay-per-signature claim in May 2012. The court ultimately found that the State's limitation on pay-per-signature compensation violated the First Amendment and permanently enjoined enforcement of the law. No appeal of the trial court's decision was taken.
- *Colorado Common Cause v. Gessler.* The 10th Circuit in *Sampson v. Buescher* declared that the \$200 threshold for issue committees was unconstitutional. The Secretary passed a rule establishing a \$5,000 threshold. The district court found that the Secretary exceeded his authority by promulgating the rule. The Secretary appealed the decision to the Colorado Court of Appeals, which affirmed the lower court's decision. The Secretary filed a petition for *writ of certiorari*, which was granted. The Secretary's opening brief is due August 8, 2013.

- *Paladino v. Gessler*. Various plaintiffs have challenged campaign finance regulations promulgated by the Secretary of State. The district court held that all but one of the Secretary's rules exceeded his rulemaking authority. The Secretary appealed the decision to the Colorado Court of Appeals. Oral argument will be heard on September 3, 2013.
- *Coalition for Secular Government v. Gessler*. The plaintiff is challenging the constitutionality of several provisions in the Campaign and Political Finance Amendment relating to issue committees, including the definition of "major purpose" and the \$200 threshold. The federal district court certified four questions to the Colorado Supreme Court, which heard oral argument regarding same on May 8, 2013. We are awaiting the Supreme Court's opinion.
- *Riddle v. Hickenlooper, et al.* The federal district court upheld the constitutionality of Colorado's constitutional limits on the amount of contributions to candidates for public office against attack under the First Amendment. The court also upheld the constitutionality of Colorado's constitutional and statutory distinction between contributions made to primary-exempt candidates and to primary-participant candidates against attack under the Fourteenth Amendment. Plaintiff appealed to the Tenth Circuit Court of Appeals and oral argument is scheduled for September 26, 2013.
- *Citizen Center v. Gessler, et al.* Plaintiff filed suit in federal district court alleging that several county clerks utilize election materials and practices that allow voted ballots to be traced back to the voter in violation of the right to secrecy of the ballot under state and federal law. The district court granted the Secretary and County Clerks' motions to dismiss for lack of standing and plaintiffs appealed. The appeal had been stayed pending final rulemaking by the Secretary; however the stay has been lifted because appellants are not satisfied with the rules.
- *Peterson v. Martinez*. The Tenth Circuit Court of Appeals upheld a provision of Colorado's concealed handgun permitting scheme that prohibits the issuance of permits to non-residents. The court held that the Second Amendment does not protect the right to concealed carry, that carrying a concealed weapon was not protected by the Privileges and Immunities Clause of Article IV, and that the Executive Director of the Colorado Department of Public Safety was shielded from suit by Eleventh Amendment immunity.
- *Cooke v. Hickenlooper*. A group of plaintiffs consisting of numerous county sheriffs, individuals, and organizations, sued the Governor in federal district court alleging that the State's ban on large-capacity ammunition magazines and universal background check requirement violated the Second Amendment. The federal district court denied plaintiffs' request to enter a TRO in advance of the preliminary injunction hearing, and denied their request for a preliminary injunction. Discovery will be conducted on an expedited basis and a trial to court likely will take place at the end of 2013 or beginning of 2014.

Public Utilities Commission

a. Pending PUC litigation – The PUC Unit is defending the PUC in the lawsuits described below:

- *Clean Air Clean Jobs Act Judicial Review Litigation I.* The Associated Governments of Northwest Colorado and Peabody Corporation have brought judicial review actions challenging a variety of procedural and substantive rulings made by the PUC in the establishment of the parameters for the retirement and replacement by Public Service Company of approximately 900 MW of coal fired generation facilities. These challenges focus on whether the decision of the PUC was just, reasonable and in the public interest and on whether any of the PUC Commissioners were biased and should have been disqualified. On April 23, 2012, the Colorado Supreme Court found that filing a petition for judicial review in the wrong court related to venue rather than subject matter jurisdiction, and that the Routt County District Court therefore possessed the authority to transfer it to a proper division of the district court. The cases were subsequently transferred to Denver and consolidated. Further, the case is stayed while the parties await a ruling from the Colorado Court of Appeals in a related case, *CMA v. Urbina*. *CMA v. Urbina* is the substantive challenge to the AQCC's approval of the Regional Haze SIP that included the CACJA emission reduction plans. The Court of Appeals heard oral argument in *Urbina* on July 2, 2013.
- *American Tradition Institute v. State of Colorado.* This federal lawsuit asserts that Colorado's Renewable Energy Standard (which became law on December 1, 2004 (codified at 40-2-124, C.R.S.) following its approval by the electors of the State as Amendment 37, and as subsequently amended by the General Assembly in 2005, 2007, 2008, 2009, and 2010) violates the dormant commerce clause aspect of the Commerce Clause of the United States Constitution. Plaintiffs seek injunctive and declaratory relief as well as damages and attorneys' fees under § 1983. SB 252 addressed and resolved some of the commerce clause issues, but the plaintiffs have amended their complaint and the case proceeds. Will Allen is heading the PUC's representation in this case.
- *Bullseye Communications v. Public Utilities Commission.* Bullseye seeks judicial review of the PUC's decisions awarding Qwest Communications Company reparations for Bullseye's failure to extend discounted switched access rates, which it had provided to some long distance carriers, to Qwest. The case has been briefed before the Denver District Court and is awaiting decision.
- *Qwest Corporation v. Public Utilities Commission.* Qwest seeks judicial review of the PUC's rulemaking that revised the telecommunications rules and, specifically, the determination of areas that are subject to effective competition and reduced regulation, and potential decreases in state subsidies in areas found to

be subject to effective competition. This case has been stayed until the end of November 2013.

- *Black Hills v. Public Utilities Commission.* Black Hills has appealed the PUC's determination that it must first approve a utility's plan to replace a coal-fired plant with a gas-fired plant before the utility may seek recovery from ratepayers for the cost of the replacement. This case is stayed pending completion of Black Hills's proceeding addressing its electric resource plan.

b. Potential PUC litigation:

- *SB 252 Litigation.* Tri-State and rural electrical cooperatives may seek judicial review in either state or federal court attacking SB 252 as a violation of the dormant commerce clause.
- *La Plata Electric Cooperative v. Tri-State Transmission and Generation.* Rural cooperative members of Tri-State and their large industrial customers have filed a complaint before the PUC requesting a declaration that Tri-State's current rate structure is discriminatory and in violation of the public interest. The Commission will be deciding whether it has jurisdiction over Tri-State's rates under the dormant commerce clause, and this decision is subject to further judicial review.

c. High-profile initiatives: The PUC is undertaking several high-profile dockets that may receive legislative or press attention: Boulder's municipalization of Public Service's distribution of electricity, Public Service's Electric Resource Plan, Black Hills's Electric Resource Plan, determination of effective competition areas in Qwest's service territories, remand of Mile High Taxi's certification proceeding, the PUC's transportation rulemaking and its impact on new entrants into the taxi and limousine markets, and Public Service's petition for certification of a new steam plant and to subsidize steam rates through gas rates.

IV) WORKLOAD MEASURE:

DEPARTMENT OF HUMAN SERVICES

Workload Measure	FY 14 Actual	FY 15 Estimate
Defend the Department in litigation regarding the implementation of the Colorado Benefits Management System (CBMS).	Review and submit monthly data regarding timely processing in accordance with settlement agreement; communicate with plaintiffs' counsel to address concerns, CBMS upgrades and processing data.	Work with the Department to address systemic issues; review monthly reports, assist the department as it prepares for health care reform, and if necessary defend in active litigation.
Defend County confirmations of child abuse/neglect in the State database system on behalf of the Department for use in employment/background checks.	Ongoing litigation to prosecute child abuse/neglect in full evidentiary hearings before the OAC.	Aggressively prosecute child abuse cases to prevent persons who are found responsible for child abuse from working with children.
Prosecute licensing actions for the Division of Childcare	Actively litigate to revoke, suspend, and deny licenses where the facility fails to follow department rules, the licensee or employs commits child abuse, or otherwise fails to assure safe care for children.	Continue to actively prosecute child care licensing cases to assure safe childcare.
Advise the Department in rulemaking and adoption process.	Review rules and advise on authority and substantive content.	Continue advising on rulemaking.
Initiate actions to revoke, suspend, or deny substance abuse treatment licenses for the Division of Behavioral Health, and certifications for the Division of Developmental Disabilities.	Prosecute treatment agencies or certified service agencies for failures to comply with Department regulations.	Continue to represent the Divisions in licensing actions.

Defend the Department in administrative proceedings brought by recipients of Vocational Rehabilitation services or programs who were denied or reduced services.	Actively defend and, where possible, negotiate settlements for the Division of Vocational Rehabilitation.	Continue to defend the Department in these actions before the OAC. Assist the Division to improve the administrative hearing rules for these cases.
File petitions in district courts on behalf of the Division of Youth Corrections for aggravated offenders, requesting extensions of commitments, release from mittimus or vacating illegal sentences.	Represent the DYC in all post-commitment juvenile proceedings, specifically those requiring a return to court for a change in placement or status or responding to subpoenas for records.	Continue representing the DYC in juvenile cases and providing legal advice. Represent the DYC in direct file cases where the juvenile should be transferred to adult jail.
Assist the Department to respond to subpoenas and open records requests.	File motions to quash or redact records as needed when responding to records requests.	Provide ongoing legal advice and representation.
Represent and advise the Division of Developmental Disabilities.	Provide legal advice and represent the Department when needed in court actions.	Advise the Division in proceedings before OAC, represent the Division in Imposition of Legal Disability proceedings, and assist with rule revisions as the department prepares to transition this program to HCPF.

Caseload Trends:

The Human Services Unit continues to see a greater variety of cases and requests for legal advice from more divisions within the Department of Human Services.

Type of Case	Number of Cases	Current Status
All Other Cases	74 cases or issues assigned	36 currently active
Child Abuse/Neglect	79 cases received	47 active currently
Child Care Licensing	33 cases received (11 were summary suspensions of the license)	18 active currently
Youth Corrections	36 cases received	All granted or pending

HEALTH CARE

Workload Measure	FY 13 Actual	FY 14 Estimate
Department of Health Care Policy and Financing		
Defend HCPF in litigation regarding the Colorado Benefits Management System.	Monitor provision of claims processing date. Respond to inquiries from plaintiffs' counsel	Anticipate that this office will continue to monitor a very complex settlement, especially after the implementation of ACA and Medicaid expansion.
Defend HCPF in numerous administrative and civil proceedings brought by recipients and providers. Pursue overpayments due from providers for amounts unlawfully paid.	65 new incoming civil cases received.	Given the substantial increase in Medicaid we anticipate increased number of provider and recipient appeals.
Recover funds expended as a result of third parties' actions and defend challenges to automatic lien statute.	Total recovery of \$88,077.89.	Same.
Coordinate with HCPF's Program Integrity Unit to uncover and eliminate provider overpayments and fraud in the Medicaid program.	Prosecute and defend provider overpayment appeals at civil level. Work with agency and health care fraud task force to identify fraud in the Medicaid program.	Anticipate increase in provider appeals due to increasing Medicaid enrollment.
Advise HCPF in the rule-making and adoption process to keep the state in compliance with federal and state statutes in connection with the distribution of benefits.	Continue to provide advice to Medical Services Board, attend monthly meetings, and review proposed regulations for compliance with state and federal law.	Continue representation of MSB.
Provide advice and legal opinions with regard to numerous Medicaid, health care, and CORA	50 requests for legal opinions received.	Need for legal advice and opinions is expected to increase due to health care reform and expansion.

issues.		
Colorado Department of Public Health and Environment		
Workload Measure	FY 13 Actual	FY 14 Estimate
Actions prosecuted to revoke, suspend, or place on probationary status licenses of Emergency Medical Technicians.	30	Anticipate equivalent case load.
Defend civil action, provide legal advice and opinions, and defend against subpoenas seeking confidential and/or overly burdensome requests.	Defended CDPHE in 20 civil matters. Defended against 20 medical marijuana related subpoenas. 25 requests for legal advice and opinions received.	Same as FY 13.
Prosecute licensing actions involving Health facilities licensed under the authority of the Department.	30 requests for assistance received regarding action or potential action to be taken against non-compliant health facilities.	Anticipate equivalent case load.
Provide rulemaking advice to Board of Health.	Review all rules and attend monthly Board meetings. Provide advice and legal opinions to Board.	Same as FY 13

EDUCATION

Caseload trends:

The unit continues to average 2-3 major constitutional cases each year.

The total number of teacher licensure cases referred has increased significantly this year, as has the number of matters that will carry over into the next year.

Legislative Measures

The General Assembly enacted numerous laws affecting the State Board of Education's oversight responsibilities. Many will require additional rule-making, policy and procedure creation, and additional hearings and board meeting work.

Workload Measure Teacher Licensure	Unit	FY 12 Actual	FY 13 Actual
Total teacher licensure matters referred	# of matters	89	117
Settlements obtained	# of settlements	14	15
Closed cases/matters	# of closed matters	30	62
Actions Filed/matters referred for litigation	# of cases	36	36
Cases/matters carried over to next FY	# of matters	9	56

Objective: To support the Department of Education and the State Board of Education in protecting school children from teachers who have violated State standards.

Strategy: Provide timely legal services to the clients on all matters referred; closely track case status to assure timeliness; solicit and respond to oral and written client feedback to maintain client satisfaction.

Evaluation of Prior Year Performance: The Unit avoided case backlogs and worked collaboratively with the client to achieve its objective of protecting students from substandard teachers.

Key Workload Indicators: Case status tracking numbers, client satisfaction surveys and ongoing communication to address client concerns.

PUBLIC UTILITIES COMMISSION

Workload Measure	FY 13 Actual	FY 2014 Estimate
Providing legal advice and writing decisions in the major matters listed above and the multiple smaller matters that come before the PUC each week; representing the PUC in judicial review of PUC decisions.	The PUC Unit operated at a rate of about 150 hours per month for each of the Unit's 3 attorneys. Because we had only 2 attorneys for the first quarter, and due to MC's marriage and vacation, the Unit was below 450 hours per month for the entire year.	We estimate that, absent an unforeseen circumstance, the Unit should bill at a rate of 150 hours per month, or 1800 hours per year, for each of the 3 Unit attorneys.
The PUC Unit also advises the Governor's Office on utility matters.	We estimate that between 50 and 100 hours were spent advising the Governor's Office on legislation addressing energy and telecommunications matters.	We estimate that at least as many hours will be billed advising the Governor's Office on legislative matters and perhaps defending legislation in state or federal court.

LABOR/PERSONNEL AND ADMINISTRATION

DEPARTMENT OF LABOR AND EMPLOYMENT, DIVISION OF WORKERS COMPENSATION

1. Worker's Compensation Enforcement

Objective: Pursue statutory fines against employers that fail to have WC insurance for their employees. In the event that employers continue to fail to obtain or maintain WC insurance coverage, the Division seeks to either bring the employer into compliance or close the business.

Workload Measure	Unit	FY 12 Actual	FY 13 Actual	FY14 Estimate
Total number of new cases in Unit		235	197	175 to 200
WC cases		73	54	Approx. 100 cases
WC settlements		21	43	15 to 20
WC fines imposed and sent to collections		\$2.3M	\$1.4M	\$1.5M
WC fines sent to collections		\$1.2M	\$1.3M	\$500K

2. ICAO Appeals

The Industrial Claims Appeals Office (ICAO) serves as the first appellate level for appeals in Worker's Compensation and Unemployment Insurance cases. If an ICAO decision is appealed, that appeal is filed with the Colorado Court of Appeals. Further appeal is available in the Colorado Supreme Court. The ICAO selects cases that effect the overall administration of the WC or UI systems, and not just whether benefits were granted in a particular case.

Workload Measure	Unit	FY 12 Actual	FY 13 Actual	FY14 Estimate
Total number of cases		26	21	30 cases
Appellate briefs		17	19	30 briefs
Oral arguments		4	5	7 oral arguments

3. Division of Oil and Public Safety

The Division of Oil and Public Safety (OPS) has several statutory duties including oversight of petroleum storage tanks, amusement rides, boiler inspection program, and the elevator, escalator,

and other public conveyances program. OPS is in the process of streamlining the administration of UST program claims with the goal of reducing the number of hearings and appeals.

Workload Measure	Unit	FY 12 Actual	FY 13 Actual	FY14 Estimate
New OPS cases		41	25	30 to 40 new cases
Successfully closed or dismissed cases		22	34	40 cases
OPS settlements		15	15	30 settlements

SCHEDULE 2 - PROGRAM SUMMARY

Department of Law

LEGAL SERVICES TO STATE AGENCIES

Item	Actual FY 12		Actual FY 13		Approp FY 14		Estimate FY 14		Request FY 15	
	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE
PERSONAL SERVICES	21,424,236	226.3	21,987,642	225.1	21,481,694	246.0	28,034,975	246.0	25,242,272	248.0
General Fund	-		321,583		-		-		-	
General Fund Exempt	-		-		-		-		-	
Cash Fund	1,560,550		839,619		848,945		848,945		848,945	
Reappropriated Funds	19,863,686		20,826,440		20,632,749		27,186,030		24,393,327	
OPERATING EXPENSES	2,782,987		1,990,531		-		3,863,325		1,767,549	
General Fund	-		81,435		-		-		-	
General Fund Exempt	-		-		-		-		-	
Cash Fund	-		-		-		-		-	
Reappropriated Funds	2,782,987		1,909,096		-		3,863,325		1,767,549	
INDIRECT COST ASSESSMENT	2,809,499		2,950,911		3,264,492		3,264,492		3,329,231	
General Fund	-		-		-		-		-	
Cash Fund	-		-		-		-		-	
Reappropriated Funds	2,809,499		2,950,911		3,264,492		3,264,492		3,329,231	
GRAND TOTAL	27,016,722	226.3	26,929,084	225.1	26,477,678	246.0	35,162,792	246.0	30,339,052	248.0
General Fund	-		403,018		-		-		-	
General Fund Exempt	-		-		-		-		-	
Cash Funds	1,560,550		839,619		848,945		848,945		848,945	
Reappropriated Funds	25,456,172		25,686,447		25,628,733		34,313,847		29,490,107	
Federal Funds	-		-		-		-		-	

SCHEDULE 3 - PERSONAL SERVICES PROGRAM DETAIL

Department of Law		LEGAL SERVICES TO STATE AGENCIES								
Item	Actual FY 12		Actual FY 13		Approp FY 14		Estimate FY 14		Request FY 15	
	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE
I. POSITION DETAIL										
Deputy Attorney General	491,488	3.9	622,411	5.0			717,180	5.0	717,180	5.0
Assistant Deputy Attorney General	135,528	1.0	67,764.00	0.5						
First Assistant Attorney General	2,706,978	27.1	2,868,813	28.2			3,575,952	29.0	3,575,952	29.0
Senior Assistant Attorney General	3,402,571	37.8	3,322,855	36.8			4,509,920	40.0	4,509,920	40.0
Assistant Attorney General	7,308,804	99.4	7,137,346	97.4			9,597,573	109.6	9,597,573	109.6
Assistant Attorney General II										
Assistant Attorney General I										
Attorney I										
General Professional IV										
Legal Assistant II	1,888,915	32.2	1,797,205	30.6			2,087,283	33.0	2,087,283	33.0
Legal Assistant I	38,278	0.8	49,274	1.1			47,352	1.0	47,352	1.0
Program Assistant I	42,900	1.0								
Office Manager I	215,868	4.0	265,768	5.0			275,532	5.0	275,532	5.0
General Professional V	37,762	0.4	37,762	0.4			38,515	0.4	38,515	0.4
General Professional IV							81,600	1.0	81,600	1.0
IT Tech II										
Administrative Assistant I	7,950	0.3								
Administrative Assistant III	234,516	6.0	198,979	5.1			284,424	7.0	284,424	7.0
Administrative Assistant II	447,203	12.3	541,508	15.0			564,180	15.0	564,180	15.0
TOTAL POSITION DETAIL	16,958,760	226.3	16,909,684	225.1			21,779,511	246.0	21,779,511	246.0

SCHEDULE 3 - PROGRAM DETAIL

Department of Law

LEGAL SERVICES TO STATE AGENCIES

Item	Actual FY 12		Actual FY 13		Approp FY 14		Estimate FY 14		Request FY 15	
	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE
(I.A) CONTINUATION FTE SALARY COSTS	16,958,760	226.3	16,909,684	225.1			21,779,511	246.0	21,779,511	246.0
(Permanent FTE by position) Continuation Salary Subtotal										
(I.B) OTHER PERSONAL SERVICES										
PERA on Continuation Subtotal	1,271,701		1,687,885				2,210,620		2,210,620	
Medicare on Continuation Subtotal	235,899		237,826				315,803		315,803	
Non-Base Building Performance Awards							27,008			
Part-Time/Temporary Salaries	237,649		242,714				247,560		298,673	
Contractual Services	289,546		150,419				233,569		335,327	
Overtime Pay	12,857		-				7,239		7,239	
Termination/Retirement Payouts	29,577		65,704							
Sick Leave Payouts	23,481		124,019							
Unemployment Compensation	24,062		17,723							
OT TO JUD	46,964		-							
Furloughs	-		-							
Other Employee Benefits	38,502		37,321							
Subtotal -	19,168,998	226.3	19,473,298	225.1			24,821,310	246.0	24,947,173	246.0
(I.C.) PERSONAL SERVICES										
SUBTOTAL= A+B										
(I.D.) POTS EXPENDITURES										
Health/Life/Dental	1,384,976		1,496,619				1,680,388			
Salary Survey										
Performance Awards										
Short Term Disability	29,737		28,925				41,381			
SB 04.257 A.E.D.	465,922		531,852				784,062			
SB 06.235 S.A.E.D.	374,604		456,949				707,834			
Other:										
[] Indicates a Non-add										
	21,424,236	226.3	21,987,642	225.1			28,034,975	246.0	24,947,173	246.0
(I.E.) BASE PERSONAL SERVICES= C+D										
General Fund										
General Fund Exempt										
Cash Funds	1,560,550		839,619				848,945		848,945	
Reappropriated Funds	19,863,686		21,148,023				27,186,030		24,098,228	

SCHEDULE 3 - PROGRAM DETAIL

Department of Law

LEGAL SERVICES TO STATE AGENCIES

Item	Actual FY 12		Actual FY 13		Approp FY 14		Estimate FY 14		Request FY 15	
	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE
(I.F.) DIFFERENCE= II-I.E.										
(I.G.) REQUEST YEAR DECISION ITEMS										
General Fund										
Cash Funds										
Reappropriated Funds										
Dec Item #										
General Fund										
Cash Funds										
Reappropriated Funds										
NP Decision Item: DNR Legal Hours									295,099	2.0
Reappropriated Fund									295,099	2.0
ROLLFORWARDS	-		-				-			
General Fund Exempt	-		-				-			
Reappropriated Funds	-		-				-			
Projected Spending Authority Shortfall							-			
Reappropriated Funds							-			
PERSONAL SERVICES TOTAL	21,424,236	226.3	21,987,642	225.1			28,034,975	246.0	25,242,272	248.0
General Fund			321,583							
General Fund Exempt	-		-				-			
Cash Funds	1,560,550		839,619				848,945		848,945	
Reappropriated Funds	19,863,686		20,826,440				27,186,030		24,393,327	
Federal Funds										
II. PERSONAL SERVICES REQUEST (AGGREGATE ADJUSTMENTS TO THE BASE APPROPRIATION)										
Previous Year Long Bill and Special Bills									21,481,694	246.0
DNR: Legal Hours Decision Item									295,099	2.0
									-	0.0
SPECIAL BILLS:										0.0
Salary Survey-Classified									153,961	
Merit Pay Classified									45,890	

SCHEDULE 3 - PROGRAM DETAIL

Department of Law

LEGAL SERVICES TO STATE AGENCIES

Item	Actual FY 12		Actual FY 13		Approp FY 14		Estimate FY 14		Request FY 15	
	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE
Salary Survey Exempt									2,977,269	
Merit Pay Exempt									258,950	
Annualization of Special Bills									29,409	
Subtotal -									25,242,272	248.0
PERSONAL SERVICES RECONCILIATION										
Long Bill Appropriation	19,473,569	226.6	20,510,299	237.9	21,168,224	244.5	21,168,224	244.5		
Supplemental SB 13-94			373,385	3.5						
Supplemental SB11-144		0.0		0.0						
Special Bills -										
HB 12-1303 Certification of Speech Lang Pathologists			14,990	0.1						
HB 12-1330 Hearing Process Wildlife			2,725							
HB 12-1300 Sunset Continue Prof Review Committee			2,044	-						
HB 12-1311 Sunset Continue Pharmacy Board			20,783	0.2						
HB 12-1110 Appraisal Mgt Companies			56,555	0.5						
SB 13-014 Immunity for Emerg Drugs to Overdose Victims					2,086		2,086		(2,086)	
SB 13- 26 Medical Transparency					6,953		6,953		(3,476)	
SB 13-39 Regulation of Audiologists					10,165		10,165		(2,782)	
SB 13-83 Prescribed Burning Program					4,172		4,172		(2,781)	
SB 13-151 Massage Therapists					19,120		19,120		(8,690)	
SB 13- 162 Sunset - Bd of Plumbers					5,215		5,215		(5,215)	
SB 13-172 Sunset - Accupuncture Regulation					4,519		4,519		(4,519)	
SB 13-180 Sunset Occupational Therapy					11,471		11,471		(5,214)	
SB 13-200 Expand Medicaid Eligibility					22,419		22,419			
SB 13-207 Perform Auricular Acudetox by MH Prof					5,562		5,562			
SB 13-219 Meth Lab Remediation					13,905	0.1	13,905	0.1	(10,428)	
SB 13-221 Cons Easement Tax Credit Cert App					62,573	0.5	62,573	0.5	62,573	
SB 13-238 Regulation Hearing Aid Providers/Sellers					5,215		5,215		0	
SB 13-241 Industrial Hemp					12,515	0	12,515	0	0	
SB 13-251 CDL and Identity Documentation					6,953	0.1	6,953	0.1	0	
HB 13-1111 Regulation of Naturopathic Doctors					15,296		15,296		(3,963)	
HB 13-1292 Keep Jobs in Colorado Act					41,715	0.3	41,715	0.3	0	
HB 13-1317 Implement Amend 64: Majority Rec.					63,616	0.5	63,616	0.5	15,990	
<i>SB 11-76 PERA Bill</i>	(451,303)									
SB 11-88 Sunset Review Direct Entry Midwives	3,698	-								
SB 11-91 Sunset Board Veterinary Medicine	3,962	-								
SB 11-94 Sunset Optometric Board	3,962	-								
SB 11-128 Child-only Health Insurance Plans	2,642	-								
SB 11-169 Sunset Physical Therapy Board	34,997	0.3								
SB 11-187 Sunset Mental Health Professionals	158,479	1.4								

SCHEDULE 3 - PROGRAM DETAIL

Department of Law

LEGAL SERVICES TO STATE AGENCIES

Item	Actual FY 12		Actual FY 13		Approp FY 14		Estimate FY 14		Request FY 15	
	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE
SB 11-251 Division of Fire Safety Duties	6,603	-								
HB 11-1100 Military Experience License Certificate	31,036	0.4								
HB 11-1121 Bar Felons from School Employment	9,905	-								
HB 11-1195 Private Investigators Voluntary License	6,603	-								
HB 11-1300 Conservation Easements	1,216,740	9.1								
Roll Forward to Subsequent FY										
Year End Transfers										
Overexpenditures (Reversions)										
Lapsed Appropriation Cash Funds										
Lapsed Appropriation Cash Funds Exempt										
Lapsed Appropriation Reappropriated Funds	(1,253,428)	(11.5)	(1,787,008)	(17.1)						
Other										
Allocated POTS										
Salary POTS	-		-				-			
Health/Life/Dental	1,341,104		1,709,984				1,643,905			
Short Term Disability	28,297		29,063				36,962			
SB 04.257 A.E.D.	447,651		590,208				744,199			
SB 06.235 S.A.E.D.	359,719		464,614				668,099			
Salary Survey Classified	-		-				153,961			
Salary Survey Exempt	-		-				2,977,269			
Merit Pay Classified							56,153			
Merit Pay Exempt							272,733			
Pots Subtotal	2,176,771		2,793,869				6,553,281			
Reconciled Total	21,424,236	226.3	21,987,642	225.1			28,034,975	246.0		
II. PERSONAL SERVICES REQUEST TOTAL	21,424,236	226.3	21,987,642	225.1	21,481,694	246.0	28,034,975	246.0	25,242,272	248.0
General Fund	-		321,583		-		-			
General Fund Exempt	-		-		-		-			
Cash Funds	1,560,550		839,619		848,945		848,945		848,945	
Reappropriated Funds	19,863,686		20,826,440		20,632,749		27,186,030		24,393,327	
Federal Funds	-		-		-					

SCHEDULE 3 - OPERATING PROGRAM DETAIL

Department of Law

LEGAL SERVICES TO STATE AGENCIES

Item	Actual FY 12		Actual FY 13		Approp FY 14		Estimate FY 14		Request FY 15	
	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE
OPERATING EXPENSES										
1930 Purchased Services - Litigation	108,914		91,992				494,068		496,784	
2170 Waste Disposal Services	5,087		6,007				6,000		6,000	
2210 Other Maintenance			3,844							
2220 Building Grounds Maintenance	8,940		-				-		-	
2230 Equipment Contract Maintenance	734		2,043				2,225		2,225	
2231 ADP Equip Maint/Repair Services	42,705		131,733				79,852		79,852	
2232 Software Upgrades	115,266		97,265				185,026		205,515	
2240 Motor Vehicle Repair/Maintenance	-		1,141						-	
2251 Rental/Lease Motor Pool Veh	19,786		18,874							
2252 Leased Vehicle - Variable	19,575		17,131				22,520		22,520	
2253 Rental of Equipment	36		6,390				5,240		5,240	
2254 Rental of Motor Vehicles	-		89						-	
2255 Rental of Building	737,624		748,359						-	
2258 Parking	6,600		6,600				6,600		6,600	
2259 Parking Fee Reimbursement	132		59				-		-	
2268 Rental of IT Software - Network	84,622		28,980				15,678		15,678	
2510 In State Travel	606		238				1,000		1,000	
2511 IS Common Carrier Fares	1,154		2,231				1,584		1,584	
2512 IS Personal Travel Per Diem	6,055		8,454				7,853		7,853	
2513 IS Pers Vehicle Reimbursement	936		717				715		715	
2514 IS State Owned Aircraft	-		-						-	
2515 State-Owned Vehicle Charge	-		-						-	
2520 IS Travel Non Employee	-		39						-	
2521 IS Common Carrier Non Employee	-		196						-	
2522 IS Non Employee Per Diem	-		-						-	
2523 IS Non Employee Per Veh Reimburse	-		-						-	
2530 Out of State Travel	770		869				650		650	
2531 OS Common Carrier Fares	4,591		3,509				4,312		4,312	
2532 OS Personal Travel Per Diem	4,427		2,937				4,200		4,200	
2533 OS Pers Vehicle Reimbursement	0		-						-	
2541 OS/Non-Empl Common Carrier	436		-						-	
2550 Out of Country Travel	0		-						-	
2552 OC Per Diem	0		-						-	
2610 Advertising	300		-						-	
2611 Public Relations	0		-						-	
2630 Comm Service Div of Telecom	127,963		68,280				82,546		82,546	
2631 Comm Svcs from Outside Sources	6,040		21,143				14,895		14,895	
2640 GGCC Billing Purch Services	0		-						-	
2641 Other ADP Billing	241,520		13,853				287,255		287,255	
2650 OIT Purchased Svs	-		-						-	
2660 Insurance	37,418		41,808							
2680 Contract Printing	45,553		46,201				52,852		52,852	
2681 Photocopy Reimbursement	-		60						-	

SCHEDULE 3 - OPERATING PROGRAM DETAIL

Department of Law

LEGAL SERVICES TO STATE AGENCIES

Item	Actual FY 12		Actual FY 13		Approp FY 14		Estimate FY 14		Request FY 15	
	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE
2810 Freight & Storage	0		-						-	
2820 Other Purchased Services	14,397		4,626				25,316		25,316	
2830 Office Moving-Pur Services	-		6,600				-		-	
2831 Storage-Purchase Services	1,233		810						-	
3110 Other Supplies and Materials	-		-						-	
3112 Automotive Supplies	-		-						-	
3113 Clothing and Uniform Allowance	-		-						-	
3114 Custodial	-		-						-	
3115 DP Supplies	2,299		963				29,850		28,150	
3116 Purchased/Leased Software	143,820		90,585				90,585		90,585	
3117 Educational	-		59				100		100	
3118 Food and Food Service Supplies	-		-						-	
3120 Books & Subscriptions	54,199		49,289				55,452		55,452	
3121 Office Supplies	40,928		50,081				45,245		43,848	
3122 Microfilming/Photo. Supplies	-		-						-	
3123 Postage	27,851		25,679				28,526		28,526	
3124 Printing	1,402		966				1,247		1,247	
3126 Repair & Maintenance Supplies	34		95						-	
3128 Non-Capitalized Equipment	20,009		2,264				16,450		16,450	
3131 Non-Capitalized Building Materials	115,846		5,382				4,500		4,500	
3132 Non Capitalized IT Purchases	5,519		1,781						-	
3139 Non - Capitalized Fixed Asset Other	-		-						-	
3140 Non-Capitalized IT - PC's	57,610		32,166						-	
3141 Non-Capitalized IT- Servers	-		-						-	
3142 Noncapitalized IT Network	39,559		712						-	
3143 Non-Capitalized IT Other	22,394		32,703						-	
3146 Non-Cap. IT Purch. Server Software	-		-						-	
3940 Electricity	-		-						-	
3950 Gasoline	-		-						-	
3970 Natural Gas	-		-						-	
4110 Losses	-		-						-	
4111 Prizes and Awards	12,449		950						-	
4117 Reportable Claims Against the State	-		-						-	
4140 Dues & Memberships	76,347		1,159				73,550		73,550	
4151 Interest - Late Payments	73		282						-	
4170 Miscellaneous Fees	-		-						-	
4180 Official Functions	7,786		2,369				7,260		7,260	
4220 Registration Fees	76,695		49,898				61,500		61,500	
4221 Other Educational - W2 RPT	-		-						-	
5993 Refunds			35							
6140 Leasehold Improv - Direct Purch	-		-						-	
6210 ADP Equipment	-		-						-	
6212 IT Servers - Direct Purchase	-		88,982						-	
6213 IT PC SW Direct Purchase			73,590							

SCHEDULE 3 - OPERATING PROGRAM DETAIL

Department of Law

LEGAL SERVICES TO STATE AGENCIES

Item	Actual FY 12		Actual FY 13		Approp FY 14		Estimate FY 14		Request FY 15	
	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE
6214 IT Other Direct Purchase	-		-						-	
6215 IT Network Direct Purchase	53,559		-							
6220 Office Furn & Equip	-		-				16,840			
6222 Office Furn Direct Purchase	381,187		-							
6224 Other Furn & Fixtures- Direct Purch.	-		89						-	
6480 Other Cap. Equipment-Lease Furn	-		-						-	
6340 Leasehold Improvements	-		-						-	
EBJJ OT RE LAW to JUD			97,378							
OPERATING EXPENSE SUBTOTAL	2,782,987		1,990,531				1,731,492		1,734,760	
General Fund										
General Fund Exempt										
Cash Funds	-		-							
Reappropriated Funds	2,782,987		1,990,531				1,731,492		1,734,760	
DECISION ITEMS:										
TF									-	
General Fund										
Cash Funds										
Reappropriated									-	
DECISION ITEMS: DNR Legal Hours										
TF									32,789	
Reappropriated									32,789	
DECISION ITEMS:										
TF									-	
RF									-	
ROLLFORWARDS							-			
General Funds Exempt							-			
Reappropriated Funds							-			
Subtotal:	-		-		-		-		-	
<i>Reappropriated Funds</i>	-		-		-		-		-	
Potted Operating Expenses										
Workers' Compensation							41,636			
Leased Vehicle Expense							16,809			
Carr Bldg							1,635,110			
Lease Space							19,985			
IT Asset Maintenance							348,280			
ADP Capital Outlay										
CLE Registration Fees							70,013			

SCHEDULE 3 - OPERATING PROGRAM DETAIL

Department of Law

LEGAL SERVICES TO STATE AGENCIES

Item	Actual FY 12		Actual FY 13		Approp FY 14		Estimate FY 14		Request FY 15	
	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE
Total							2,131,833			
Reappropriated Funds							2,131,833			
OPERATING EXPENSE TOTAL:	2,782,987		1,990,531		-		3,863,325		1,767,549	
General Fund			81,435				-		-	
General Fund Exempt							-		-	
Cash Funds	-		-				-		-	
Reappropriated Funds	2,782,987		1,909,096		-		3,863,325		1,767,549	
Operating Expense Reconciliation										
Long Bill Appropriation	1,479,444		1,670,720		1,696,667		1,696,667		1,731,492	
Supplemental SB 13-94			41,487							
DNR Legal Hours Decision Item									32,789	
Special Bills -										
HB 12-1303 Certification of Speech Lang Pathologists			1,666							
HB 12-1330 Hearing Process Wildlife			303							
HB 12-1300 Sunset Continue Prof Review Committee			227							
HB 12-1311 Sunset Continue Pharmacy Board			2,309							
HB 12-1110 Appraisal Mgt Companies			6,284							
SB 13-014 Immunity for Emerg Drugs to Overdose Victims					232		232		(\$232)	
SB 13- 26 Medical Transparency					772		772		(\$386)	
SB 13-39 Regulation of Audiologists					1,129		1,129		(\$309)	
SB 13-83 Prescribed Burning Program					463		463		(\$309)	
SB 13-151 Massage Therapists					2,124		2,124		(\$966)	
SB 13- 162 Sunset - Bd of Plumbers					579		579		(\$579)	
SB 13-172 Sunset - Accupuncture Regulation					502		502		(\$502)	
SB 13-180 Sunset Occupational Therapy					1,275		1,275		(\$579)	
SB 13-200 Expand Medicaid Eligibility					2,491		2,491		\$0	
SB 13-207 Perform Auricular Acudetox by MH Prof					618		618		\$0	
SB 13-219 Meth Lab Remediation					1,545		1,545		(\$1,159)	
SB 13-221 Cons Easement Tax Credit Cert App					6,952		6,952		\$6,952	
SB 13-238 Regulation Hearing Aid Providers/Sellers					579		579		\$0	
SB 13-241 Industrial Hemp					1,390		1,390		\$0	
SB 13-251 CDL and Identity Documentation					772		772		\$0	
HB 13-1111 Regulation of Naturopathic Doctors					1,699		1,699		(\$440)	
HB 13-1292 Keep Jobs in Colorado Act					4,635		4,635		\$0	
HB 13-1317 Implement Amend 64: Majority Rec.					7,068		7,068		\$1,777	
SB 11-88 Sunset Review Direct Entry N	411									
SB 11-91 Sunset Board Veterinary Med	440									
SB 11-94 Sunset Optometric Board	440									

SCHEDULE 3 - OPERATING PROGRAM DETAIL

Department of Law

LEGAL SERVICES TO STATE AGENCIES

Item	Actual FY 12		Actual FY 13		Approp FY 14		Estimate FY 14		Request FY 15	
	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE
SB 11-128 Child-only Health Insurance	293									
SB 11-169 Sunset Physical Therapy B	3,889									
SB 11-187 Sunset Mental Health Profe	17,609									
SB 11-251 Division of Fire Safety Dutie	734									
HB 11-1100 Military Experience Licens	3,448									
HB 11-1121 Bar Felons from School E	1,100									
HB 11-1195 Private Investigators Volun	734									
HB 11-1300 Conservation Easements	135,193									
Allocated POTS:										
Vehicle Lease Payments	18,485		21,625				16,809			
Capital Complex Lease Space	718,796		807,929				1,635,110			
Lease Space	18,857		19,985				19,985			
<i>Worker's Compensation</i>	37,418		42,307				41,636			
IT Asset Maintenance	321,177		348,280				348,280			
Building Security	70,213		81,136				-			
Postage Increase										
ADP Capital Outlay										
CLE Registration Fees	64,125		70,763				70,013			
Year-End Transfer										
Rollforward from previous FY										
Rollforward to Subsequent FY										
Overexpenditure/(Reversion)										
Lapsed Appropriation Cash Funds Exempt										
Lapsed Appropriation Reappropriated	(109,819)		(1,124,490)							
Other										
TOTAL	2,782,987		1,990,531		1,731,492		3,863,325		1,767,549	
GF			\$81,435							
RF			1,909,096							
OPERATING AND LITIGATION:					1,731,492				1,767,549	
General Fund									-	
Cash Funds									-	
Reappropriated					1,731,492				1,767,549	
INDIRECT COST ASSESSMENT	2,809,499		2,950,911		3,264,492		3,264,492		3,329,231	
General Fund										
Cash Funds										
Reappropriated Funds	2,809,499		2,950,911		3,264,492		3,264,492		3,329,231	
INDIRECT COST ASSESSMENT TOTAL	2,809,499		2,950,911		3,264,492		3,264,492		3,329,231	
General Fund										
Cash Funds										
Reappropriated Funds	2,809,499		2,950,911		3,264,492		3,264,492		3,329,231	

SCHEDULE 3 - OPERATING PROGRAM DETAIL

Department of Law

LEGAL SERVICES TO STATE AGENCIES

Item	Actual FY 12		Actual FY 13		Approp FY 14		Estimate FY 14		Request FY 15	
	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE	Total Funds	FTE
Indirect Cost Assess. Reconciliation										
Long Bill Appropriation	2,809,499		2,950,911				3,264,492			
Lapsed Appropriation Reappropriated	-									
Other										
TOTAL	2,809,499		2,950,911				3,264,492			
GRAND TOTALS LSSA (PS, OP, IND)	27,016,722	226.3	26,929,084	225.1	26,477,678	246.0	35,162,792	246.0	30,339,052	248.0
General Fund	-		403,018		-		-		-	
General Fund Exempt	-		-		-		-		-	
Cash Funds	1,560,550		839,619		848,945		848,945		848,945	
Reappropriated Funds	25,456,172		25,686,447		25,628,733		34,313,847		29,490,107	

SCHEDULE 4 - SOURCE OF FINANCING - DIRECT REVENUES

Department of Law		LEGAL SERVICES TO STATE AGENCIES			
Item	Actual	Actual	Approp	Estimate	Request
	FY 2012	Actual FY 13	Approp FY 14	Estimate FY 14	Request FY 15
Schedule 3 Total	27,016,722	26,929,084	26,477,678	35,162,792	30,339,052
General Fund	-	403,018	-	-	-
General Fund Exempt	-	-	-	-	-
Cash Funds	1,560,550	839,619	848,945	848,945	848,945
Reappropriated Funds	25,456,172	25,686,447	25,628,733	34,313,847	29,490,107
Federal Funds	-	-	-	-	-
CASH FUNDS					
Various Sources of Cash				848,945	848,945
Fringe Benefits					
AIDT Receiversip and Liquidation					
College Invest	3,195				
Colo State VA Center-Homelake					
Rifle State Nursing Home	757				
Service Director of Nursing Homes					
PERA	149	583			
Colorado Student Loan Program		2,452			
Student Obligation Bond Authority					
Correctional Industries	3,719				
Auraria Higher Education Ctr-Tabor Enterp	408				
CU Health Sciences Center	192	120			
Revenue - Lottery	20,833				
Division of Wildlife-Enterprise	549,121				
Cumbres & Toltec RR					
Colo School Dist Self Insurance PL					
Disability Insurance Trust	17,237	15,990			
SVC-State VA Center - Fitzsimons	42,130				
AHEC	80,805	28,273			
State Board of Agriculture	67,002	47,321			
DOAG/Brand BD	8,247				
School of Mines	251,374	196,702			
UNC	2,217	19,069			
Adams State College	125,465	175,443			
Metro State College	113,294	78,104			
Mesa State College	29,434	48,297			

SCHEDULE 4 - SOURCE OF FINANCING - DIRECT REVENUES

Department of Law		LEGAL SERVICES TO STATE AGENCIES			
Item	Actual	Actual	Approp	Estimate	Request
	FY 2012	Actual FY 13	Approp FY 14	Estimate FY 14	Request FY 15
Western State College	26,046	22,897			
Ft. Lewis College	113,830	92,808			
CCCOES	45,497	74,303			
Private VOC School	38,632	28,759			
CU Boulder	2,074	2,770			
CSU-Global Campus		40			
Authorities - State Comp.					
Student Loan	2,967	5,447			
Health Benefit Exchange Board	7,614	240			
DOLE Petroleum storage tank	8,313				
Reversion of Excess Earnings to G/F (CF)					
Subtotal Cash Funds	1,560,550	839,619		848,945	848,945
REAPPROPRIATED FUNDS					
Various Sources of Cash Exempt Administration				34,313,847	29,490,107
Agriculture	321,034	311,552			
Colorado Horse Develop,emt Authority					
Corrections	1,006,966	1,270,547			
Correctional Industries		2,759			
Education	277,876	243,592			
Governor's Office	617,718	433,876			
Governor's Office - OIT					
Energy Conservation	87,128				
Public Health and Environment	2,260,015	2,393,330			
Higher Education	6,931	85,418			
HE - Comp Resort Auth	78				
Arts and Humanities Council					
Historical Society	67,599				
Health Care Policy and Financing	897,969	868,046			
Human Services	1,351,570	1,336,319			
Nursing Homes		65,524			
Judicial	165,347	181,220			
Law - HIPAA					
Law - POST	12,314	15,455			

SCHEDULE 4 - SOURCE OF FINANCING - DIRECT REVENUES

Department of Law		LEGAL SERVICES TO STATE AGENCIES			
Item	Actual	Actual	Approp	Estimate	Request
	FY 2012	Actual FY 13	Approp FY 14	Estimate FY 14	Request FY 15
General Assembly (GA)	5,201	5,542			
Labor & Employment	701,236	577,753			
Local Affairs	115,419	123,277			
Military Affairs	9,712	6,190			
Natural Resources	2,774,516	3,514,961			
Personnel	213,463	168,290			
Risk Management	2,337,118	2,211,194			
Public Safety	290,515	325,367			
Regulatory Agencies	7,359,709	7,383,603			
Revenue	2,673,273	2,564,746			
Revenue - Gaming	167,795	149,508			
Secretary of State	502,594	290,263			
Transportation	1,132,068	956,102			
Treasury	166,884	133,168			
State Fair Authority	27,614	21,928			
Lottery		25,829			
Interest		21,105			
Rollforward					
Capital Construction Expenses					
Transfer to Fund Litigation Mgmt Fund	(93,490)				
Fund Balance Addition		(16)			
Underearned Revenue					
Subtotal Reappropriated Funds	25,456,172	25,686,447		34,313,847	29,490,107
Total Revenues - CF and RA	27,016,722	26,526,066			